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UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

EXAMINATION QUESTIONS

First and Second Semesters	1944-45
Summer	1945

First and Second Semesters	1945-46
Summer	1946

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ADMINISTRATIVE LAW

(LAW 33)

FINAL EXAMINATION IN ADMINISTRATIVE LAW (LAW 33)

Second Semester 1944-1945

Professor Sullivan

TIME: Three and one-half hours

1. The Pullman Company filed with the Illinois Commerce Commission a schedule of increased rates in January of 1942. The Commission entered an order suspending the new rates until a hearing could be had on the rates. The hearing was held in July, at which time the Pullman Company introduced evidence of the cost of intrastate operations in Illinois and the income derived from those operations. This tended to show that the Company was operating at a loss on this business. The Commission took the case for consideration after the evidence was all in. In November 1942 the Commission entered an order suspending the new rates and denying the Company's application for an increase. The Commission stated that the application was denied because, (1) it was a matter of common knowledge that Pullman business increased greatly after the beginning of the war and that therefore the new rates were unnecessary; and (2) the record did not show that the Company had given notice to the Office of Price Administration as required by the Federal Emergency Price Control Act. That Act provides, "No common carrier or other public utility shall make any general increase in its rates ... unless it first gives notice to the President or such agency as he may designate and consents to timely intervention by such agency before the ... state agency having jurisdiction to consider such increase."

The Illinois statute requires that the Commission shall fix rates which are just and reasonable.

Upon appeal from the order of the Commission, what result? Why?

2. The Administrator of the Wage and Hour Division has the responsibility of enforcing the provisions of the Fair Labor Standards Act, better known as the Federal wage and hour law. The statute provides that the Administrator shall "investigate and gather data regarding the wages, hours, and other conditions of employment in any industry subject to the Act, and he may enter and inspect such place and records, question such employees ... as he may deem necessary or appropriate to determine whether any person has violated any provision of the Act." When permission to enter is denied, the Administrator may secure this information by a subpoena duces tecum. Further, the Administrator is authorized to order all employers to keep certain records on forms authorized by the Administrator.

The X Publishing Company refused to permit the Administrator or his agents to inspect the records. The Company contended that it was not subject to the Act because it was not engaged in interstate commerce or in the production of goods for commerce as defined in the Act. The Administrator issued a subpoena duces tecum directed to the Company, requesting the production of "books, papers, and documents showing the hours worked by, and the wages paid to, each of your employees between October 29, 1938, and the date hereof (April 7, 1945), including all payroll ledgers, time sheets and cards, and time clock records, and all your books, papers and documents showing the distribution of your newspapers, and the source and receipt of advertisements of nationally advertised goods." Upon the refusal to comply, the Administrator applied to the appropriate District Court for an order enforcing the subpoena.

What result? Why? Discuss fully the function of the Court in this proceeding.

3. The Federal Trade Commission began a proceeding against a large group of cement manufacturers alleging that the companies were violating the anti-trust laws by entering into a combination to fix prices, one element of which was the pricing based upon a multiple basing point system. The companies first sought to have the Commission disqualify itself from hearing the case because it had previously considered basing point pricing in other industries and in each of these former cases, the Commission had found that there was a violation of the Act. It was alleged therefore that "the Commission was not a tribunal free from bias and prejudice and the respondents could not receive a fair hearing and determination before the Commission." The Commission refused to disqualify itself or any of its members. The case was heard before the full Commission. Evidence was introduced that the companies were engaging in pricing on a basing point system. Then the attorney for the Commission offered in evidence transcripts from the records of previous hearings which tended to show that basing points necessarily result in uniform prices at the basing points and that these uniform prices show a violation of the Act. This evidence was admitted over the objection of the companies.

During the hearing, one of the Commissioners became ill but he recovered before the completion of the case and participated in the decision.

The Commission ordered the companies to cease and desist a number of practices, one of which was the use of basing points.

The companies then filed two suits:

1. In the District Court to vacate the order and to adduce additional evidence of the bias and prejudice of the Commission.
2. In the Circuit Court of Appeals to set aside the order of the Commission on the ground that they were deprived of a fair hearing.

Decide and discuss the two suits.

4. The Illinois Medical Practice Act requires that before a man may be admitted to the state examination to secure a license to practice medicine, he must be a graduate of a reputable medical school. The Department of Registration and Education which administers the Act has promulgated a rule which requires every applicant for the state examination to furnish a transcript of his college and medical school records.

Josef Hoffman alleged that he was a graduate of the medical school at the University of Breslau in Germany and that he had practiced medicine in that country for twenty years, that he was forced to leave the country and that he cannot secure transcripts of his college or university work. After being refused permission to take the state examination, he filed a petition for a writ of mandamus to compel the Director of Registration and Education to admit him to the examination.

What result? Why?

5. (a) Discuss briefly the use of the declaratory judgment by administrative agencies.
(b) Discuss the application of the doctrine of res judicata to the decisions of the administrative tribunals.
6. (a) Which of the proposed Federal bills to improve administrative procedures will in your judgment be most effective? Discuss the bill you select and indicate the evils that will be corrected by it. (b) Should the new Illinois Administrative Review bill have been passed? Why or why not?

FINAL EXAMINATION IN ADMINISTRATIVE LAW (Law 33)

First Semester 1945-1946

Professor Sullivan

Maximum Time: 3 Hours

1 and 2. The Illinois Legislature passed the following statute:

"Be it enacted:

"Sec. 1. That every employer of labor in this State, engaged in carrying on any work or process which may produce any illness or disease peculiar to the work or process carried on, or which subjects the employees to the danger of illness or disease incident to such work or process, to which employees are not ordinarily exposed in other lines of employment, shall, for the protection of all employees engaged in such work or process, adopt and provide reasonable and approved devices, means or methods for the prevention of such industrial or occupational diseases as are incident to such work or process.

"Sec. 2. Every employer within Section 1 of this Act shall be liable to any employee who is disabled by an occupational disease as defined in Section 1, the liability to be limited to and coextensive with the sums payable under the Workmen's Compensation Act of this State.

"Sec. 3. The Department of Labor shall make rules determining the work or employments in this State which cause occupational diseases. The Department of Labor shall further require the installation of such protective devices as may be necessary to prevent occupational diseases.

"Sec. 4. The Department of Labor shall after notice and hearing determine the liability of employers for the occupational diseases of individual employees.

"Sec. 5. Determinations in individual cases made by the Department under Section 4 shall be reviewed by the courts in accordance with the provisions of the Uniform Administrative Review Act."

The Department made a finding under Section 2, that the business of glass making is an employment under Section 1. The inspectors did not order any protective devices installed in glass factories.

One Peter Piper filed a complaint with the Department of Labor for compensation for silicosis allegedly the result of the sand in the air at the glass factory. The employer, the Dandy Glass Co., was notified that such complaint was made and was directed to appear on a date 10 days in the future and offer its defense. This notice came by ordinary mail but it was received by the plant superintendent. Before the hearing, the Company asked for a bill of particulars but this was denied. A further motion to make the complaint more definite and certain was denied. At the hearing, the testimony was conflicting on the issue of the silicosis and also on whether the disease, if it did exist, was caused by the employment.

The Department found for the employee and the employer sought review.

Discuss all of the problems involved, including the scope of review.

3. The M Railway was wholly owned by a manufacturing company for which the Railway performed switching services. When it furnished switching services for trunk line railroads, it was paid \$4.50 per car for this service. Other railroads were paid only \$2 per car for like services. A complaint was filed with the Interstate Commerce Commission alleging that the effect of this practice was to give the manufacturing company a preferential rate. After a hearing the I.C.C. found "the rate is discriminatory and therefore the differential must be eliminated."

Discuss the validity of this order.

4. The X Motor Transit Company filed a petition with the Interstate Commerce Commission for a certificate of convenience and necessity as a motor carrier of freight between Detroit, Michigan, and Columbus, Ohio, over U.S. Route 23.

At the hearing (after notice had been given to competing carriers), the trial examiner stated that the Commission had had a large number of applications for certificates over this same route and that the Commission expected to refer to the records made in those hearings to assist it in weighing the evidence at this hearing. After full hearing, the Commission found that Route 23 was already carrying more traffic than could safely use the highway in its existing condition. It arrived at this conclusion after examining reports of accidents on this road as prepared by the highway departments of Ohio and Michigan, and the Commission had had the condition of the road checked by its engineers and a traffic count made. The Commission further found that the existing service was adequate. The certificate was therefore denied.

(a) The carrier seeks to enjoin the enforcement of this order. Should the injunction be granted? Why or why not?

(b) Is this a "negative order" of the I.C.C.? Explain your answer.

5. A statute of State X delegates to the Secretary of State the authority to issue certificates of title for motor vehicles brought into the state only after he finds that the applicant has title to the car. A license to operate the car on the highways of X will not be granted until the applicant has secured a certificate of title. A clerk in the Secretary's office made an inquiry in State Y and came to the conclusion that an applicant for a certificate had not shown good title to the car for which the certificate was requested. The applicant was not given a hearing nor did he have any notice of the evidence upon which the clerk made the decision.

Assuming that there is no statutory method of appeal, decide what method of review is available. As counsel for the applicant, give the arguments to support your petition for a reversal of the decision.

6. The Federal Communications Act confers power on the Federal Communications Commission as follows:

"Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall--

"(a) Classify radio stations;

"(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class; * * *

"(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act * * *;

"(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest; * * *

"(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting; * * *

"(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act * * *."

Acting under the provisions of the statute, the F.C.C. assigned to three of its commissioners the responsibility for holding hearings and making recommendations for the regulation of chain broadcasting. A letter was sent by ordinary mail to all radio station licensees in the United States, stating that hearings would be held and setting forth the time and place of these hearings. Of the more than 500 persons who desired to testify at the hearings, only 96 witnesses were given an opportunity to present their testimony orally. Others were permitted to write their comments. Obviously these letters were not subject to cross-examination. The hearings held by the commissioners were informal, the witnesses were not sworn, nor were subpoenas given to either the broadcasters or to counsel for the F.C.C. The hearings lasted for 73 days, after which all interested parties were given the opportunity to submit briefs. The three commissioners prepared an intermediate report which was served only on the chain broadcasters, who were then given an opportunity to argue orally before the whole commission on the recommendations contained in the report.

The F.C.C. then adopted the recommendations of the hearing commissioners and entered an order as follows:

1. NBC was required to dispose of one of its two "chains."
2. The networks were ordered to cease and desist the network control over the rates of affiliated stations.
3. The option time clauses were ordered deleted from contracts between the networks and affiliated stations.

The F.C.C. announced that it would refuse to renew the licenses of any station which failed to comply with this order.

(a) A group of listeners in the Chicago area sought to intervene in the proceeding and when intervention was denied, they sought to appeal from that order. Discuss the right of these persons to intervene and to appeal.

(b) On the assumption that there is a statutory method of appeal, can NBC enjoin the enforcement of the order?

(c) Discuss all of the procedural defects in this proceeding and then give your decision on the validity of the order.

7. Summarize the provisions of the new Illinois Administrative Review Act. (2 pages)

FINAL EXAMINATION IN ADMINISTRATIVE LAW (LAW s33)

Summer 1946

Professor Sullivan

Maximum Time-3½ Hours

1. & 2. The Hatch Political Activity Act makes it unlawful for an employee or an officer of a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants from the United States to engage in certain types of political activity. The United States Civil Service Commission is given power to determine when a state employee or officer is guilty of violating the statute. This determination is to be made after a hearing. If the Commission finds that the employee violated the Act, notice is given to the state or local agency to discharge the employee or officer and if that is not done, the Commission is authorized to notify the federal agency making the loan or grant and such grant will be terminated for a period of two years. The employee may not be reemployed within a period of 18 months if he is discharged.

One Donaldson, a member of the Highway Department of State X, was accused of violating the Act. The Civil Service Commission, acting on a complaint filed with it, sent notice by ordinary mail to Donaldson setting out the charges in the complaint. Donaldson was given five days to file an answer, and the case was set for hearing in Washington on the thirtieth day after the notice was mailed. Donaldson answered alleging that he was not an employee subject to the Act, and he prayed that the proceeding be dismissed. The Commission refused to dismiss and ordered the respondent to appear at the hearing. Donaldson then filed a bill in the U. S. District Court for the District of Columbia in which he sought to enjoin the Commission from holding a hearing on the ground that he was not, as a matter of law, subject to the Act, and further, if he was, the Act violated the U.S. Constitution.

a. Should the court grant the injunction? Why or why not?

Assume that the injunction was not granted, and the Commission proceeded as follows:

At the hearing, the Commission admitted into evidence the affidavits of fellow employees in the X Highway Department, which stated that the respondent had solicited contributions in violation of the Act. These witnesses were not called to testify at the hearing. After the hearing had been in progress for two days, Donaldson resigned from his position and offered no evidence. The Commission, acting on the evidence it had introduced on the jurisdictional issue and on the affidavits, found against Donaldson and ordered the grant to State X suspended. The State, acting through its attorney general, sought to appeal on the ground that the hearing was unfair and that the resignation of Donaldson made the question moot. Donaldson also seeks judicial review. (Assume that the proper method of review had been chosen.)

b. Decide the question on review and discuss all of the problems involved.

3. The Order of Railroad Conductors and the Brotherhood of Railroad Trainmen both claimed the right to represent certain employees of the Pennsylvania Railroad in collective bargaining. Acting under the Railway Labor Act, the Trainmen requested that the National Mediation Board (the correct agency) hold an election and certify the Trainmen. The election was held and the Trainmen won and were certified. There being no statutory method of appeal from the order of the Board, the Conductors began suit against the Board and the Pennsylvania Railroad in the U. S. District Court to enjoin the Board's order and for a declaration that the Conductors are the appropriate bargaining representatives. In the District Court the Board filed a motion to dismiss the suit as to the Board. This motion was granted and the Conductors did not appeal from this order. The District Court then dismissed the suit. The Circuit Court of Appeals dismissed the appeal on the ground that an

indispensable party to the suit was missing from the case.

Was the circuit court correct? Why or why not? Discuss the judicial review of this order of the Board.

4. The Federal Communications Act authorizes the Federal Communications Commission to grant a license to construct a broadcasting station if the Commission "on examination of the application finds that public interest, convenience and necessity will be served by the grant." The Act also provides that if upon examination of the application the Commission "does not grant the license, it shall notify the applicant thereof, shall fix and give notice of a time and place for a hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe." The Act also recognizes that two applications for the same wave length in the same geographical area are mutually exclusive.

The Good Time Radio Co. filed its application for a permit to construct a station at Bucyrus, Ohio, to broadcast on 1200 kilocycles. The Honest Harding Co. of Marion, Ohio, which is 18 miles distant from Bucyrus applied for the same wave length. The F. C. C. granted the Good Time license on the basis of the first part of the statute set out above, that is, solely on the basis of the application. Honest Harding Co.'s application was designated for a hearing under the second part of the act. Honest Harding sought to reopen the Good Time proceeding and to intervene. This was denied by the F. C. C. The company then appealed to the Circuit Court of Appeals, before it had its hearing before the Commission.

Should the court affirm or reverse the Commission? Why?

5. Congress passed the new Administrative Procedure Act at the last session. Discuss the effectiveness of this act in correcting the deficiencies in administrative procedure which were pointed out in the Report of the Attorney General's Committee.

6. The Blue Goose Bus Company applied to the Illinois Commerce Commission for a certificate of convenience and necessity to operate a bus line from Brightville to Darktown in the state of Illinois. There was no bus service available between these towns. The Company was required by the Commission's rules to notify all competing companies in the area. Notice was sent to all motor transport companies and electric railways but not to steam railroads. The hearing, which was required by statute, was conducted informally. None of the protestants appeared. None of the witnesses was sworn and there was no cross-examination. Upon the completion of the hearing, the Commission found "that convenience and necessity require the operation, because the Commission knows from its records in previous hearings that there is no adequate service between these cities."

The Night and Day Railroad, which serves both cities but does not have a direct line connecting the two, now seeks to appeal from the order.

a. Should the circuit court grant the appeal? Why or why not?

b. Should the Commission's decision be affirmed or reversed?

7. Describe the method of review provided in the new Illinois Administrative Review Act.

AGENCY

(LAW 11)

FINAL EXAMINATION IN AGENCY (LAW 11)

Second Semester 1945-46

Professor Holt

BE CONCISE, GIVE REASONS FOR YOUR CONCLUSIONS.

1. P tells A, his chauffeur, to take his watch to T to be cleaned and valued. Misunderstanding P, and thinking that he is authorized so to do, A offers to sell the watch to T. T called P's wife on the telephone and asked her whether A was authorized. She disclaimed all knowledge of the matter and T asked her to have P telephone him if A were not authorized, which she promised to do. She told P of her telephone conversation with T, but P in his worry over inflation and O P A forgot to telephone T, who thereupon purchased the watch for \$250 and a week later resold to B for \$350. What are T's rights and liabilities?
2. P directed A, a broker, to buy goods for P. A bought goods from T for \$5000, the goods being delivered to P. T sued A for the purchase price and had judgment by default. P then paid A the purchase price, with which A absconded. Rights of T?
3. A, without authority, made an executory contract in the name of P to purchase coal from T. A secretly intended to take the purchase for his own account, but used the name of P, a well known coal dealer, in order to obtain credit. P learned what A had done and wrote A: "I accept what you have done in my behalf and will be pleased to have you have the coal delivered to my coal yard." P later became insolvent before the time for performance of the contract. What are the rights and obligations of A and T as to each other?

BILLS AND NOTES

(LAW 15)

FINAL EXAMINATION IN BILLS and NOTES (Law 15)

Second Semester 1945-1946

Professor Britton

I offer a premium for brevity.

* * * * *

I.

Comment, in a sentence or two, on the effect, if any, upon negotiability of an instrument which, though otherwise negotiable, contained any one of the following clauses:

- (a) "payable when my 1946 corn crop is sold";
- (b) "payable one year after my death";
- (c) "payable May 1, 1947, or any time before then, at the option of the holder";
- (d) "payable May 1, 1947, or any time before then, at the option of the maker";
- (e) "payable May 1, 1947, or upon the maker's failure to deposit with the holder additional collateral sufficient to absorb a depreciation in the value of the collateral originally deposited to secure this note".

II.

As in Question I, comment in a sentence or two, on the effect, if any, upon negotiability of an instrument which, though otherwise negotiable, contained any one of the following clauses:

- (a) "Charge to my farm products account";
- (b) "payable from the rentals from my office building";
- (c) a clause authorizing the sale of collateral deposited to secure payment of the note;
- (d) "payable subject to the terms of the accompanying trust deed";
- (e) in an instrument with a fixed maturity, a clause authorizing confession of judgment "at any time hereafter".

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III.

M drew a check on the D bank for \$100.00 payable to the order of P and delivered the same to P for value. P indorsed the check in blank and delivered the same to A for value. A indorsed the check specially and delivered it to B for value.

The check was lost by B and found by a person unknown who represented himself as B, indorsed B's name and negotiated the check to C for value. C obtained payment from the drawee D. B notified M of the loss, but the check had been paid before M could stop payment.

May M recover the amount from D?

May B recover the amount from C?

IV.

M drew his check for \$100.00 on the D bank, payable to the order of P, and delivered the same to P in payment of the price of goods sold by P to M. Under his blank indorsement, P deposited the check in his checking account in the A bank for collection. The A bank, under its indorsement: "Pay any bank or banker", forwarded the check to the Federal Reserve Bank for collection and remittance. The Federal Reserve Bank forwarded the check by mail to the D bank for payment. The D bank drew its remittance draft on the X bank and sent the same to the Federal Reserve Bank. Before the remittance draft was paid by the X bank, the D bank failed.

(a) May P recover from A?

(b) May P recover from the Federal Reserve Bank?

(c) May P recover from the Receiver of D?

(d) May P recover from M?

V.

P obtained M's negotiable note for \$500.00 by fraud. P negotiated the same to A for \$300.00, A having notice of the fraud. A discounted the note at the X bank for \$400.00, which took for value, before maturity and without notice of the fraud. The X bank failed. The Receiver sold a large number of the bank's notes to

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A, among them being the above note. A paid \$400.00 for this note. A died, and left by his will all these notes to his son B. B sues M on the above note. May he recover?

VI.

M executed and delivered his note for \$100.00 payable to the order of P. In a poker game, P lost \$100.00 and paid the debt by negotiating this note to the winner, A. P told M of this transaction and asked him not to pay A. On presentment, M refused to pay. A sued M. Is he entitled to recover?

VII.

M drew his check for \$100.00 on the D bank, payable to the order of P and delivered the check to P for value. A person unknown stole the check, and by erasures and substitutions, raised the check to \$400.00 and negotiated the check to A for \$400.00. On presentment, D dishonored the check. A sues M. May he recover?

Suppose D had paid A \$400.00. Could D recover from A?

VIII.

A, an employee of M, by the use of a forged invoice, fraudulently induced M to draw a check on the D bank to the order of X and to mail the same to X. X was a confederate of A. The check was received by X who indorsed his name and, through a bank, obtained payment from the drawee and divided the money with A, in accordance with A's directions.

Subsequently, and by the same means, A induced M to draw another check on the D bank, payable to the order of X, but instead of seeing that the check was mailed, took the check himself, indorsed X's name and obtained payment from the drawee D.

On discovery of the fraud, M sued D for the amount of both checks. May he recover?

* * * * *

CONFLICT OF LAWS

(LAW 31)

FINAL EXAMINATION IN CONFLICT OF LAWS (LAW 31)
First Semester 1944-1945
Professor Holt

READ THE QUESTIONS CAREFULLY. GIVE REASONS FOR YOUR CONCLUSIONS. GIVE PROPER CONSIDERATION TO PERTINENT PROVISIONS OF THE UNITED STATES CONSTITUTION, SUCH AS THE DUE PROCESS CLAUSE, FULL FAITH AND CREDIT CLAUSE, ETC.

1. A statute of State X provides:

"Breach of contract to marry shall not constitute an injury or wrong recognized by law, and no action, suit or proceeding shall be maintained therefor."

Defendant in State X telephoned an offer of marriage to plaintiff in the Bahama Islands. Plaintiff accepted over the telephone. Later, in a telephone conversation between the defendant while in State X and the plaintiff in State Y, the defendant repudiated his offer. Plaintiff sued defendant in the United States District Court in State X for breach of contract to marry. Defendant moved to dismiss the action. What disposition of the motion?

2. H and W were divorced in State X, where a statute forbids divorcees to remarry within six months of the rendition of the decree and declares such a prohibited marriage to be void. H married W2 in State Y within the six-month period. Later H married W3 in State Y while W2 was still alive and the prior marriage to W2 undissolved. A statute of State Y prohibits parties who have obtained a divorce in State Y from remarrying within one year. H was indicted for bigamy in Y and convicted. On appeal he contended that his marriage with W2 had been void, and that for that reason his conviction should be set aside. What disposition on appeal?

3. D died domiciled in State X, intestate. Prior to his death he had contracted to sell land in State Y owned by him. Under the law of Y, the widow was entitled to a third of his estate, but under the law of X she was entitled to half. D's administrator secured specific performance of the contract and then applied to the proper court in State Y for instructions as to how to distribute the proceeds. What instructions?

4. H and W were married and lived together in State X. H was killed in the course of his employment and W was awarded compensation under the Workmen's Compensation Act of State X. W then moved to State Y and while living there went through a ceremony of marriage with H2 in Utopia, a foreign country. H2 and W resided in State Y after the ceremony. W brought a suit in State Y for annulment of her marriage to H2 on the ground that her consent to the marriage had been obtained by fraud. Fraud is not a ground for annulment in Utopia, but the Y court decreed annulment. Under the Workmen's Compensation Act of X, remarriage of a widow to whom compensation has been awarded for the death of her husband absolves the employer or his insurance carrier from any duty to continue with payment of compensation. In accordance

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TUBERCULOSIS

with that statute, a petition was filed by the proper party for a termination of all further payments to W because of W's marriage to H2. W answered the petition by denying the marriage and pleading the State Y annulment decree. What disposition of the case?

5. In Milliken v. Pratt (1878) 125 Mass. 374, it seems that action was brought upon a guaranty given to a firm in Maine by a married woman domiciled in Massachusetts in consideration of the extension of certain credit to her husband. The guaranty was mailed from Massachusetts to Maine and there accepted by the extension of credit as requested. The statute of Massachusetts forbade a married woman to be surety. A Maine statute provided that a contract of a married woman made for any lawful purpose should be as binding on her as if she were a single woman. On refusal of payment, action was brought in Massachusetts and judgment was ordered in her favor in the Superior Court, but on appeal judgment was for the plaintiffs, the Supreme Judicial Court saying: "The contract ... must ... be treated as made and to be performed in the state of Maine."

Comment on the decision in the light of the following:

"Rights being created by law alone, it is necessary in every case to determine the law by which a right is created. The creation of a personal obligation, which has no situs and results from some act of the party bound, is a matter for the law which has to do with those acts. A personal obligation, then, is created by the law of the place where the acts are done out of which the obligation arises."

"Without attempting the difficult task of defining a contract, it seems a safe statement that a contract is made only when the law gives to the acts of the parties a binding effect. ... As Story puts it: '... The law of the place of the contract acts upon it, independently of any volition of the parties, in virtue of the general sovereignty possessed by every nation to regulate all persons and property and transactions within its own territory.'"

FINAL EXAMINATION IN CONFLICT OF LAWS (Law 31)

First Semester 1945-1946

Professor Holt

BE CONCISE. GIVE REASONS FOR CONCLUSIONS

1. (A) In State X a statute provides that a contract for the sale of lands or any interest therein for a longer term than one year shall be void unless the contract or some note or memorandum thereof is in writing and signed by the party to be charged. State F has a statute that "no evidence of a contract for the creation or transfer of an interest in land shall be competent unless it be in writing."

P and D made an oral bilateral contract in X for the purchase and sale of premises in State F, delivery of deed and payment of purchase price to be made in X.

Action by P against D in State F for damages for breach of contract. Should P recover?

Suit for specific performance in State F by P against D. Should D have a decree in his favor?

(B) In State X a statute provides that no action shall be brought on a contract for the sale of lands or any interest therein for a longer term than one year unless the contract or some note or memorandum thereof is in writing and signed by the party to be charged. Under this statute courts of the state of X have denied recovery for breaches of oral agreements made in other states for the conveyance of lands in other states, whether or not such oral agreements were enforceable in such other states. In State F a statute provides that a contract for the sale of land or of any interest therein for more than one year shall be void unless the contract or some note or memorandum thereof is in writing and signed by the party to be charged. In State X an oral agreement for the purchase and sale of premises in State X was made by P and D, delivery of deed and payment of price to be in X.

Action by P against D in State F (a) for damages for breach of contract, (b) for specific performance. Result?

2. Action for divorce in State F on grounds of desertion and cruelty brought by Wife against Husband, who pleaded that he and Wife had been divorced in State F(2). At the trial he introduced a properly certified transcript of a decree of court in F(2) purporting to decree an absolute divorce of Husband from Wife on grounds of desertion and cruelty. As counsel for Wife, how would you proceed (a) before Williams v. North Carolina I, (b) in the interval between it and Williams v. North Carolina II and (c) since the latter case?

3. State Y has a statute in effect imposing upon a bailor of an automobile liability to compensate a third person injured by the bailee's negligence in driving the automobile. O in State X acceded to D's request that he be permitted use of O's automobile for a day's outing. D drove the car into State Y and there by his negligent driving injured P. Under diversity of citizenship jurisdiction P brought actions in a federal district court in State Z against D and O for the recovery of damages, but died before trial.

(a) By statute of State Y actions to recover damages for injuries to the person survive; there is no such statute in either X or Z. What disposition of the actions?

3. (b) By statute of State Z actions to recover damages for injuries to the person survive; there is no such statute in either X or Y. What disposition of the actions?

4. State X has a Workman's Compensation Act that provides that the liability of an employer to pay compensation thereunder "shall be exclusive and in place of any other liability whatsoever," but if injury to an employee covered by the Act is due to the negligence of a third party, the employee may take compensation and within six months thereafter bring an action in tort against the third party, and in the event of the employee's recovery, the employer or his insurer has a lien on the proceeds to the extent of the total amount of compensation awarded. If such employee takes compensation under the Workman's Compensation Act, but fails to bring a tort action against the third party within six months thereafter, "such failure shall operate as an assignment" to the person paying compensation and if such assignee recovers an amount in excess of the total amount of compensation awarded, the assignee shall pay to the injured employee $\frac{2}{3}$ of such excess.

State Y's Workman's Compensation Act defines "employee" as "every person in the service of another under any contract of hire, express or implied, oral or written." The 15th section states that where the injury for which compensation is payable was caused

"under circumstances creating a legal liability in some person other than the insured to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages or against the insurer for compensation, but, except as hereinafter provided, not against both. If compensation be paid, the insurer may enforce, in the name of the employee or in its own name and for its own benefit, the liability of such other person, and if, in any case where the employee has claimed or received compensation within six months of the injury, the insurer does not proceed to enforce such liability within a period of nine months after said injury, the employee may so proceed. In either event the sum recovered shall be for the benefit of the insurer unless such sum is greater than that paid by it to the employee, in which case four-fifths of the excess shall be paid to or retained by the employee."

The 18th section states that if an insured employer enters into a contract with an independent contractor to do such employer's work,

"or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the insured employer, and the insurer would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation to those employees, the insurer shall pay to such employees any compensation which would be payable to them under this Act if the independent or sub-contractors were insured persons."

The 24th section provides that an employee of an insured employer shall be held to have waived his right of action at common law, or under the law of any other state in respect to an injury occurring therein, for the recovery of damages for

personal injuries,

"if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance."

Courts in State Y have held that under sections 15, 18 and 24 an employee of an insured employer who has not retained his common law rights of action against such employer, and who is therefore entitled to compensation under the Act, is not only barred from suing his employer at common law, but also from suing a negligent subcontractor of his employer.

J, a corporation of State X, made a contract with T to soundproof a building in State Z. Under subcontracts with S and C, both corporations of State Y and engaged in manufacturing in State Y, J participated in the manufacture of stone pipe on the premises of S in State Y by supervising the work and furnishing the services of P, whom J had hired four years earlier in State X. P had been working under such contract of employment in State X when J sent him to State Y for the purpose just mentioned. While at work for J in the manufacture of the pipe, P was injured on the premises of S in State Y through the negligence of employees of S and C. J had a policy of insurance under the Workman's Compensation Act of State X and P had at the time he entered the employment of J accepted the benefits of the Workman's Compensation Act of State X. When J made its contract with T, the policy of insurance had been extended by endorsement on the policy to include coverage under the Workman's Compensation Act of State Y applicable to work upon which J was engaged at the time and place of injury to P.

Under the diversity of citizenship jurisdiction, P filed tort actions in the United States District Court in State Y against S and C five months after his injury.

Can the actions be maintained?

5. One of the states of the United States of America has the following statute:

"Marriages solemnized abroad by a consul or diplomatic agent of the United States shall be valid in this state."

A federal statute provides in substance that marriages in a foreign country in the presence of a consular officer of the United States between persons who would be authorized to marry in the District of Columbia shall be valid for all purposes.

Discuss the constitutionality of these statutes, i.e., the extent to which these statutes may be enforced.

FINAL EXAMINATION IN CONFLICT OF LAWS (Law s31)

Summer 1946

Professor Holt

Give reasons for your conclusions. Provisions of the United States Constitution should be considered when pertinent.

1. A statute of State F provides that a contract or sale of goods of the value of \$500 or upwards "shall not be enforceable by action unless ... some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf." The Civil Practice Act of that state provides that in any action on a contract the complaint shall state whether the contract was oral or written. A statute of State F-2 provides that "no action shall be brought on any contract for the sale of goods of the value of \$50 or upwards unless ... some note or memorandum in writing of the contract or sale be signed by the party to be charged or by his agent in that behalf." The Federal Rules of Civil Procedure provide that in pleading to any preceding pleading, "a party shall set forth affirmatively ... statute of frauds ... and any other matter constituting an avoidance or affirmative defense."

In State F-2, P, a resident of State F, and D, a resident of F-2, made an oral agreement for the sale and delivery to P by D three months later of goods of the value of \$5000. Action by P against D in the U.S. District Court in State F for recovery of damages for D's failure to perform.

Result?

2. A statute of State F provides that breach of contract to marry shall not constitute an injury or wrong recognized by law and that no action shall be maintained therefor. D in State F telephoned an offer of marriage to P in Cuba. P accepted over the telephone. Later, in a telephone conversation between D in State F and P in State G, D repudiated his offer. P sued D in U.S. District Court in State F for breach of contract to marry. D moved to dismiss the action. What disposition of the motion?

3. P, a resident of State F, while acting within the scope of his employment by E, a resident of State F, under a contract of employment made in State F, was injured in an automobile accident in State F-2 by the negligence of T. The State F Workmen's Compensation Act provides that an injured employee may not only receive compensation, but may also institute an action for damages against the third person responsible therefor, and the employer paying compensation under the act is subrogated to any recovery in the action to the extent of payments made. Under the State F-2 Workmen's Compensation Act, acceptance of an award by an employee constitutes an election, which bars him from proceeding against any third person, but the employer who has paid compensation may in the name of the employee maintain action against a negligent third person for injuries inflicted upon the employee to an amount not in excess of that spent by him on behalf of the employee. P consults you as to his rights. What would you advise?

4. State F has a statute that in effect imposes liability upon the bailor of an automobile for injuries to third persons caused by the bailee's negligent driving. O in State G granted A the use of his car for a day's outing. A drove into State F and there by his negligent driving injured P. Three days later A was himself killed in an accident and D was appointed his administrator in State H. Under diversity of citizenship jurisdiction P brought actions in a federal district court in State H against D and O.

- (a) By statute of State F, actions to recover damages for injuries to the person survive the death of the wrongdoer; there is no such statute in either G or H. What disposition of the actions?
- (b) By statute of State H, actions to recover damages for injuries to the person survive the death of the wrongdoer; there is no such statute in either F or G. What disposition of the actions?

5. By statute of State F "no contract or conveyance by a married woman as surety or guarantor for her husband shall be binding on her." By the statute of State G, a wife may become surety for her husband and her contract pledging her property to secure her husband's debts binds her. D and wife, residents of State G, mortgaged a farm of the wife's in State F to secure D's note. P, a purchaser of the note for value and an assignee of the mortgage, brought suit in State F to foreclose the mortgage. May he?

CONSTITUTIONAL LAW

(LAW 22)

FINAL EXAMINATION IN CONSTITUTIONAL LAW (LAW s22)

Summer Session 1945

Professor Sullivan

MAXIMUM TIME: FOUR HOURS

Following the statement of the question you will note that there is a space limitation and a percentage figure which indicates the percentage value of the question. You should be guided by these figures in the planning of your time. Please do not exceed the space allotted to the answer for each question. Begin each question on a new page. DO NOT write on the first page of the examination book.

1. Discuss the case of Marbury v. Madison. 1 page 10%

2. One Palmer brought an action against the Dark Blue Securities Corporation for the return of funds paid by Palmer for unlisted securities. At the time of the commencement of the action, the Minnesota Blue Sky Law (which provided that the sale of unlisted securities was unlawful and that one who had purchased them in reliance upon a representation that the securities were listed could recover the amount paid) contained no special statute of limitation. The Dark Blue Corporation pleaded the general statute of limitation of six years. It was agreed that more time had elapsed than six years, and if the six-year statute was to apply, the action had to fail. While the action was pending, the Minnesota Legislature amended the Blue Sky Law and provided a five-year Statute of Limitation for actions arising under that statute, the five years to run from the date of the delivery of the securities. The statute further provided that the time for beginning actions which had accrued prior to the passage of the amended act should be extended to one year from the date the act was approved. It is admitted that the action by Palmer against the Dark Blue Corporation was begun within this one-year period, and the plaintiff relies upon that statute. The Minnesota Supreme Court sustained the plaintiff's allegation under the amended statute of limitation, and the plaintiff recovered. The defendant challenged the constitutionality of the amended statute, and after the decision of the Supreme Court of Minnesota, the defendant appealed to the United States Supreme Court. What result? Why? 2 pages 15%

3. The Southern Pacific Company operates a line of railroad through the state of Arizona. In 1939 the Arizona legislature passed a statute which limits the length of freight trains passing through Arizona to 70 cars, and the length of passenger trains to 14 cars. The statute provides money penalties for violations. The State brought an action in its own courts to enforce the money penalties. After a judgment for the State in the courts of Arizona, the Southern Pacific Company secured a writ of certiorari from the United States Supreme Court. Assume that the constitutional questions were seasonably raised. Should the Supreme Court reverse? Why? 2 pages 20%

4. The State of Oklahoma, in 1919, adopted a constitution under which the legislature passed a statute imposing a premium tax on foreign insurance companies doing business in Oklahoma. In 1941 the legislature levied a tax of 4% on all premiums paid by Oklahoma residents to foreign insurance companies. There is no comparable tax on insurance companies chartered in Oklahoma. The Long Life Insurance Company refused to pay the tax, and the Director of Insurance in Oklahoma brought an action in the state court to collect the tax. The Long Life Insurance Company resisted the payment of the tax on the ground that it was unconstitutional. Should the Company's contention be sustained or not? Why? 1½ pages 10%

5. The Rough Rope Corporation was engaged in the manufacture of hemp and sisal products in the state of Ohio. The raw materials used in its manufacture were imported from foreign countries. The goods were purchased through a New York broker. Shipment was made from the foreign countries involved to the New York broker with directions to notify the Rough Rope Corporation upon the arrival of the materials in the United States. The New York broker notified the carriers to deliver the materials to the corporation. Shipment was made on the general credit of the Rough Rope Corporation, and there is nothing in the facts to indicate any resale in the United States. When the hemp and sisal were delivered to the Rough Rope Corporation in Ohio, they were stored in the original packages in the warehouse of the corporation awaiting manufacture. While being so stored, the state tax commissioner sought to levy a property tax upon the goods. The Rough Rope Corporation asserted that the tax was unconstitutional.

(a) In an action brought to collect the tax, should the tax commissioner recover? Why or why not?

(b) Would it make any difference in your answer if some of the goods were imported from the Philippines? Explain.

2 pages 15%

6. The Borden Corporation sells milk and milk products in many cities scattered all over the United States. The corporation owns an office building in New York City. The executive offices are located in this building, and much of the planning for the corporation is done by employees whose offices are in the building.

The maintenance employees - janitors, elevator operators, etc. - bring an action to recover wages to which they allege they are entitled by the Fair Labor Standards Act. This act requires the payment of certain wages and overtime to individuals who are engaged in interstate commerce or in the production of goods for commerce.

(a) Assuming that the activities of the maintenance men are found to be within the scope of the statute, is the statute constitutional as applied to them? Why or why not?

(b) Does it make any difference if the building is owned by a building corporation which rents 50% of its space to the Borden Corporation? Why?

1½ pages 15%

7. Summarize the decisions of the United States Supreme Court since 1942 on the constitutional guaranty of freedom of speech and religion.

3 pages 15%

FINAL EXAMINATION IN CONSTITUTIONAL LAW (LAW 22)

Second Semester 1945-1946

Professor Sullivan

MAXIMUM TIME: FOUR HOURS

Please do not write on the first page of the examination book. After each question you will find the maximum amount of space to be given to the answer, and also the proportionate value of the question. Be guided by these factors in apportioning your time. There will be no extension of time.

1. The State of Alabama has a statute which imposes on the Commissioner of Agriculture the duty to inspect plants which process dairy products in the state. He is also directed to inspect the raw materials in the plants and the finished products thereof to determine their wholesomeness and fitness for use as foods.

The Old Gold Butter Company with plants in Alabama is engaged in the processing of "renovated butter" or "packing stock butter" in the city of Birmingham, Alabama. The company obtains 25% of its raw materials from Alabama farmers and local merchants and 75% of its "packing stock butter" from other states. Approximately 90% of the product is shipped in interstate commerce. The production of "packing stock butter" is taxed by the United States, and the Secretary of Agriculture is authorized to inspect this product if it is to be shipped in interstate commerce.

The Alabama Commissioner during the year has made inspections on thirty different occasions, and he has found that 16 batches, which total over 20,000 pounds, were unfit for consumption. All of this material has been seized by the State and destroyed summarily. The Company now seeks to enjoin the Alabama officials from inspecting and destroying either the plants, the raw materials or the finished product.

Assume that you are the attorney for the Company. What constitutional objections would you advance to sustain your bill for an injunction? Give the arguments in support of each objection.

(2 pages - 15%)

2. Discuss the case of Brown v. Maryland.

(1½ pages - 10%)

3. A statute of the State of X made it a crime to remain as a trespasser on property owned by another after one had been ordered to leave by the owner. The Ebony Coal Company owned a large tract of land adjoining its coal mine. The Company constructed houses which were rented to miners. It had built and operated a department store which sold many of the necessities of life. Since the company owned the whole town, it had title to the streets.

A member of the sect known as Jehovah's Witnesses appeared on the streets of the town to distribute literature and to play the phonograph records extolling the creed of the sect. The representative of the Company ordered the Witness to leave the premises, and upon refusal to do so, the Witness was convicted of violating the statute.

Upon appeal from the conviction, what result? Why?

(2 pages - 15%)

4. One Fortuna was owner of lands in Puerto Rico, which were adjacent to the Jacaguas River. Under Spanish law, the owner enjoyed rights appurtenant to this land to draw from the river 15,000 acre feet of water per year for irrigation purposes. In 1908, Puerto Rico adopted a law which authorized the building of irrigation works. As a part of this program, a dam was to be erected above the lands owned by Fortuna. Fortuna's water rights were not purchased or condemned by the insular government, nor were these rights surrendered. In 1913, the legislature passed a statute authorizing the Commissioner of Irrigation to enter into contracts with persons owning water rights. Acting under the statute, Fortuna and the Commissioner entered into a contract. In exchange for the rights appurtenant, the Commissioner agreed for Puerto Rico to deliver to Fortuna specific amounts of water depending upon rainfall and the irrigation needs of the lands. These amounts were variable but it was agreed that they should be a fair equivalent of the water rights relinquished by Fortuna. Under the irrigation law, lands in a district were subjected to a uniform annual assessment per acre to discharge the costs of operation.

In 1921 the legislature passed a statute taxing lands which used water from the irrigation system, but which did not pay for the water under the irrigation law. Under this statute, an action was brought to collect the taxes from Fortuna. He refused to pay on the grounds that the tax violated a section of the Organic Act of Puerto Rico which provides: "No law impairing the obligation of contracts shall be enacted."

Can the tax be collected? Give reasons.

(2 pages - 15%)

5. The Fair Labor Standards Act requires the payment of minimum wages and fixes maximum hours for persons who are "in interstate commerce or in the production of goods for interstate commerce." The Daily Clarion, a newspaper in the village of Beanblossom, prints one thousand newspapers in its weekly edition. Of that number five copies are sent to former residents of Beanblossom who are now residents of other states.

If the statute is found to apply to the employees of the Clarion, is it valid? Discuss.

(1½ pages - 10%)

6. The United States owned land in the State of North Dakota before that territory became a state. This land was retained by the United States, and a post office, court house and office building were erected thereon and used for governmental purposes for many years. Finally, the location was no longer advantageous for the purposes for which the buildings were used and the property was offered for sale at an auction. The property was sold to Dead Eye Dick, who paid cash to the United States to the amount of one-third of the purchase price. Dead Eye agreed to pay the balance in equal monthly installments over a period of ten years. Title remained in the United States and Dead Eye was to get legal title to the land only after all of the purchase price was paid. Under the contract of sale, the buyer went into possession. The State then sought to levy a property tax on the land. The State Supreme Court held that the tax was valid, but that the tax lien was inferior to the lien the United States had on the land for the purchase price.

The United States Supreme Court granted certiorari.

What result? Discuss fully.

(3 pages - 20%)

7. An ordinance of the City of Richmond, Virginia, lays an annual license tax in the following terms: "(Upon) Agents, Solicitors, Firms or Corporations engaged in business as solicitors \$50.00 and one-half of one per centum of the gross earnings, receipts, fees, or commissions for the preceding license year in excess of \$1,000."

Mary Smith was convicted of soliciting orders for the delivery of nylon hosiery without first having paid the license fee. It is to be noted that the ordinance applies to all solicitors or door-to-door salesmen in the city.

Should the conviction be affirmed or reversed? Why?

(2 pages - 15%)

CONTRACTS I

(LAW 1a)

QUIZ IN CONTRACTS (LAW 1a)

Professor Goble .

April 10, 1945

Please write your name on the first page of this examination book in the space provided. Then turn over to page 3 of the examination book to begin writing.

The following matters will be taken into consideration in grading this examination: (1) Familiarity disclosed as to cases and other legal literature on the subject; (2) Plausibility of both legalistic and social argument or theory; (3) Clarity, conciseness and precision of expression (especially accuracy in the use of legal terms); (4) Organization of points and general forcefulness of discussion.

1. S, living in the same town as B, sent a letter through the mail to B offering to sell some goods, and asking that B reply by messenger. B decided to accept, told his secretary that he was accepting, immediately wrote out and signed an acceptance which he handed to his office boy, directing him to deliver it to S. Just as the office boy entered S's outer office, but before he had had an opportunity to deliver the message, S, from his inner office, called B's place of business by 'phone and told the secretary who answered the 'phone that the offer was revoked. At that time B was out of the office and did not return for an hour, at which time he was told by his secretary of S's revocation. But in the meantime the message of acceptance had been actually delivered to S by the office boy. S refused to deliver the goods. What are B's rights, if any?
2. (a) A said to B, "I have a five-acre patch of ground that has been lying idle for several years. I really have no use for it, but it would be just as well for it to be under cultivation as in weeds. You may have the use of it for potatoes this year if you want it." In reliance on the promise, B plowed and cultivated the ground and was ready to plant the potatoes when A told him he had changed his mind and that he wanted to turn some hogs in on it, which he did. The plowing was of no particular benefit to the hogs. What are B's rights, if any?
- (b) Suppose B, after plowing the ground, had failed to plant any potatoes, but had let it grow to weeds. What rights would A have, if any?

CONTRACTS II

(LAW 32)

FINAL EXAMINATION IN CONTRACTS II (LAW 32)

Summer 1945

Professor Goble

1. By an oral agreement A promised to convey to B a tract of land, called X, for \$1000. The agreement was later reduced to writing, but through an error tract Z was described rather than X. It appearing that Z was somewhat more valuable for B's purposes (though not worth more on the market) than X, B decided to take Z. This, however, was not satisfactory to A, who brought a suit to reform the contract to describe X rather than Z and for specific performance. B, in his defense to the bill, relies upon the (1) parol evidence rule, (2) the statute of frauds, and (3) immateriality of the mistake (since the two lots were of practically the same market value). B also files a cross bill for specific performance.

(a) Dispose of A's bill.

(b) Dispose of B's cross bill.

2. B, having been induced by fraud to buy certain shares of stock from S, tendered the stock back to S and demanded a return of the purchase price. Upon S's refusal to accept, B brought an action to recover damages for breach of contract. S filed a plea that the action was barred by the prior rescission. B then dismissed his complaint and filed a bill in equity to cancel the transaction and recover the price paid. S then defended on the ground that the prior action was an affirmance and barred this action because inconsistent therewith. Decide the case.

3. K, an antique dealer of bad reputation, representing himself to be M, a dealer of good reputation, sold a Queen Anne chair to B, for which B gave a promissory note for \$100. The chair was reasonably worth \$100. Upon B's discovery of the true identity of K, he tendered back the chair and demanded the return of his note. K refused and upon the maturity of the note brought an action upon it. B's defense was fraud. The jury found that K intentionally misrepresented his identity to induce B to buy the chair, and that B was thereby deceived and induced to enter the contract. Is B's defense good?

4. In March S sold and delivered to B a combine, for which B agreed to pay \$1,000 on August 1st following. Due to failure of the wheat crop, B did not make the anticipated profits on his combine, and consequently he defaulted. S notified him that the contract was rescinded and to return the combine. This B refused to do, and said he would pay for the machine the next year. In the meantime the cost of combines had materially increased. May S recover (1) the combine; (2) the value of the combine; (3) \$1,000, the purchase price?

5. In negotiating for the purchase of a farm by P from D it was stated that the acreage was around 220 and that the price was \$150 per acre. Offers and counter-offers were then made, but finally P agreed to buy the farm for \$31,687. The deed as executed read "222 51/100 acres more or less." P took possession and nine months later upon a resurvey of the land it was found to contain only 206 acres. P sues to recover compensation for the deficiency in acreage. Result?

If judgment should go against D, should he have the option of obtaining rescission of the transaction?

6. A, by fraud, induced B to purchase from A a block of stock in X corporation. The consideration was certain stock in Y corporation worth \$10,000 (which stock was delivered to A at the time of the contract), \$10,000 paid in cash and a note for \$30,000 due in one year. A immediately sold the Y stock to C. A little later B discovered the fraud, and he now comes to you for advice.

- (a) What additional facts would you attempt to elicit from your client?
- (b) Discuss the possible remedies available to B and indicate what your advice to him would be.

7. A owned and operated an antique shop. He purchased from a junk dealer at "junk price" a carload of old furniture. These articles he repaired and refinished and offered them to the public as antiques. Out of the lot he sold a small table to B for \$25. Neither A nor B knew anything about the table except that it was old. B later discovered convincing documentary evidence that the table had once belonged to Marie Antoinette and had occupied a corner in her famous room at the palace of Fontainebleau. Its worth was estimated at \$500 to \$800. What are the rights of A, and of the junk dealer, if any?

8. Defendant was indebted to plaintiff bank on his note for \$5,000. When defendant's note came due, he applied to plaintiff for an extension of time and was told that the bank would sue him at once on the note unless he would endorse two other notes executed by defendant's brother-in-law. Defendant testified that he was worried "nearly crazy" by plaintiff's letters and telegrams, and finally endorsed the brother-in-law's notes. In an action against defendant and his brother-in-law on the notes, defendant pleads duress. What judgment?

9. D bought an acetylene heating and lighting plant from P Co. under a written contract, signed by D, which provided that "this instrument covers all the agreements between the purchaser and the company, and no agent or representative of the company has authority to make or has made any statements, representations or agreements, verbal or written, modifying or adding to the terms and conditions herein set forth."

In a suit by P Co. against D for the purchase price, D set up as a defense: that the agent of P had orally represented that the apparatus bought was more efficient and would do better work and produce carbide gas at much less expense than an older machine which D had, that it would adequately heat D's dwelling in a better and more satisfactory way than it could be heated by coal, that the machine would run on a 200-barrel drum of carbide for a period of four months at a cost of \$12.55; that all these representations were false and fraudulent and known to be such; that they were made for the purpose of deceiving D; and that D, relying upon said representations, purchased said machine.

There were no such representations set out in the written contract. P asked for a directed verdict. What ruling on the motion?

10. An aged father and mother conveyed their homestead and farm to their son in consideration of his written promise to furnish them a comfortable home and support during the remainder of their lives. About four years after the execution of the deed, the son ordered his father off the farm and refused to support him further, and made it so uncomfortable for his mother that she was compelled also to leave the place. The parents file a bill to cancel the deed. Result?

FINAL EXAMINATION IN CONTRACTS II (Law 32)

First Semester 1945-1946

Professor Goble

1. A statute required any person engaged in the practice of architecture to obtain a certificate from a Board of Examiners. The statute established a fee of \$25 to be paid by each applicant and also indicated the type of examination to be given by the Board. For violation a fine of \$50 to \$100 could be imposed. The statute did not declare contracts made in violation of it to be illegal, nor did it require a certificate for superintendents of constructions.

P, without having obtained such a certificate, held himself out as an architect and performed services as such for D in the erection of a building. P now sues D in two counts: (a) the amount of \$2500 which D had agreed to pay him for drawing plans and specifications for the building, and for superintending the construction of the building, and (b) in quantum meruit for the reasonable value of the services performed, alleging that the reasonable value of drawing the plans was \$1000 and of superintending the construction \$1500. Dispose of the case.

2. D, having received a discharge in bankruptcy, opened up a business within a few doors of F Bank, from which D had borrowed \$1000 prior to his bankruptcy. This account had been discharged for \$250 in the bankruptcy proceedings. P's president went to D and threatened him with the ill will of the bank and with trouble in obtaining future credit from the bank unless he signed a note for \$750, representing the amount lost by the bank on the old claim. D was induced thereby to sign the note. P sues D on the note. Result?

3. K ordered from P a quantity of crushed ice to be delivered at K's back doorstep. Because of a mistake in address, not the fault of P, P's servant delivered the ice to D, who, believing it to be abandoned property, used it. Upon discovering the mistake, P demanded payment for the ice from D. For what amount, if anything, is D liable?

4. At the age of 15, P left the home of F, his father who was a farmer. D, an uncle of the boy, urged him to return and finally promised orally that if he would agree to return and work for his father until of age, he (D) would pay him \$1000. P agreed to do so and did return and work for his father until he was 21, but D refused to pay. P sues D to recover the \$1000 or in the alternative the value of his services. Dispose of P's claim.

5. Croker, in Chicago, traded 1000 shares of stock in a Mexican silver mine to Manley for a tract of real estate. The shares were valued by Croker at \$5 per share. During the negotiations preceding the transaction, Croker stated in a letter to Manley that "the mines are rich with silver; they will pay a dividend of from 20% to 100%; and there is enough ore on the dump at the mines to pay the par value of the stock." Before the deal was closed, Manley visited the mine, and made a thorough examination of the mine by walking over the grounds, going into the shafts, making selections of specimens which he had assayed. At that time he expressed himself as being satisfied with what he saw. The statements made by Croker to Manley proved to be false, and shortly after the transaction the mine closed. Manley files a bill in equity to cancel the deed. Result?

6. B sent to S a statement which purported to show that B was solvent and his business was in a flourishing condition, as a consequence of which S sold B on 60 days credit 1000 bags of coffee. B immediately turned over 500 bags of the coffee to X to satisfy an overdue \$2000 debt owed by B to X. He sold another 200 bags to Y for \$800 cash, which B deposited in his checking account in the bank. Another 100 bags were sold to Z on 30 days credit. Another 150 bags were exchanged with K for a quantity of sugar. The 50 remaining bags were in B's warehouse when B went into bankruptcy. S then discovered that B's financial statement was completely false. At the time of B's bankruptcy he had \$1000 in his checking account, 30 bags of coffee in addition to the 50 mentioned above, and small quantities of various items of groceries. What are S's rights in law and equity?
7. F, father of S, falsely represented to X, a rich relative, that S was about to be married, whereupon X sent S \$5000 as a gift to assist X in starting in business. S had no knowledge that the gift was intended as a wedding present. He used the money to purchase an interest in a business. X later learned that S did not marry and had no intention of doing so. X sues S for the \$5000. Result?
8. By an oral agreement S promised to convey to B a tract of land, called X, for \$1000. The agreement was later reduced to writing, but through an error part of X and part of Z, an adjoining tract, were described, but the land described was of the same dimensions as X. It appearing that the land described was somewhat more valuable for B's purposes (though not worth more on the market) than X, B decided to take it. This, however, was not satisfactory to S, who brought a suit to reform the contract so as to make it describe X, and for specific performance. B, in his defense to the bill, relies upon the (1) parol evidence rule, (2) the statute of frauds, and (3) immateriality of the mistake (since the two lots were of practically the same market value). B also files a cross bill for specific performance.
- (a) Dispose of S's bill.
 - (b) Dispose of B's cross bill.
9. B, having been induced by fraud to buy certain shares of stock from S, tendered the stock back to S and demanded a return of the purchase price. Upon S's refusal to accept, B brought an action to recover damages for breach of contract. S filed a plea that the action was barred by the prior rescission. B then dismissed his complaint and filed a bill in equity to cancel the transaction and recover the price paid. S then defended on the ground that the prior action was an affirmation and barred this action because inconsistent therewith. Decide the case.
10. K, an automobile dealer of bad reputation, representing himself to be M, a dealer of good reputation, sold a used Packard Car to B, for which B gave a promissory note for \$1000. The car was reasonably worth \$1000. Upon P's discovery of the true identity of K, he tendered back the car and demanded the return of his note. K refused and upon the maturity of the note brought an action upon it. B's defense was fraud. The jury found that K intentionally misrepresented his identity to induce B to buy the car, and that B was thereby induced to enter the contract. Is B's defense good?

CRIMINAL LAW

(LAW 5)

FINAL EXAMINATION IN CRIMINAL LAW (LAW 5)

First Semester 1944-1945

Dean Harno

PART II

There is no limitation on your time on these questions. You should be able to finish within two hours.

1. A statute provides: "Whoever, with intent to injure the insurer, burns a building ... belonging to himself or another and which at the time is insured against fire, shall be punished by imprisonment in the state prison for not more than twenty years."

I's house, which was insured against fire, accidentally caught fire. I saw that his house was on fire but did nothing to extinguish the fire, though he might have saved the main structure had he acted promptly when he first discovered the fire. There was some evidence that he told bystanders that the house was well insured. On these facts do you believe that I can be found guilty under the terms of the statute quoted? Analyze and give reasons.

2. A statute provides: "Every person who shall expose for sale as cider vinegar any vinegar not made exclusively of pure apple cider shall be punished by fine," etc. M, a merchant, purchased 12 one-gallon jugs of vinegar labelled by S, the seller, as cider vinegar. S had a large apple orchard and furnished cider and vinegar to many merchants in the vicinity. The vinegar sold to M was in fact adulterated, by an employee of S without S's or M's knowledge, with water to the extent of 10%. M placed the jugs of vinegar on a shelf in his store. He was convicted, under the above statute, on a charge of attempting to sell adulterated vinegar. Should the conviction be sustained? Analyze fully.

3. The following facts are known to the prosecuting attorney. On the night of August 15, 1944, A, in a secluded spot, was held up at the point of a gun by a man who took A's pocketbook and watch. B is a material witness. B, on being questioned by the police, told them that he had witnessed the hold-up, and identified the man who committed the robbery as C. On being questioned as to how he happened to be there, B said he was merely out for a walk. The police then asked him whether he was not on his way home at the time he witnessed the hold-up, after visiting M, a young lady who lived in the vicinity. B emphatically denied this. Later, when confronted with positive proof that he had been visiting M, B said he had not intended to tell a lie but said that he did because he wished to shield M from being mentioned in connection with the case. On these facts would you advise that the prosecuting attorney bring a charge of perjury against B? Analyze and give reasons.

4. H, while passing a house at night, saw a beautiful red Irish setter dog on a leash tied to a tree. H, who liked dogs, decided to appropriate him and took him along with him. Actually the dog had been stolen by T. T had a room in the house H was passing and had tied the dog to a tree temporarily while he had gone into the house. The owner of the dog was O. The next day H saw an advertisement put in a paper by O, describing the dog and offering a reward. The advertisement stated that a reward of \$50 would be paid by O, and no questions

would be asked of the person who returned the dog. H thereupon took the dog to O and received \$50. O kept his promise and asked no questions. Of what crime or crimes, if any, do you believe H guilty? Analyze thoroughly and give reasons.

5. K and M were seen to enter a boat together at night and row out on a lake. About an hour later K returned alone. Eye witnesses were able to establish these facts. K and M actually were confederates in crime and had committed several crimes in that community. After K had returned to shore alone, he was arrested. He was then questioned and he confessed that he had quarrelled with M and, believing that M was about to tell the police about their crimes, he said that he had killed M, while they were out in the boat, and that he had weighted M's body and thrown it into the lake. Actually, K had hit M on the head with a blackjack and then had tied the anchor to him and thrown him into the water. When M hit the water he revived, broke loose from the anchor, and swam ashore. Since he wanted to get away from the police, he left for parts unknown. The police never found him. In fact, they did not look for him, excepting for his body in the lake which, of course, they did not find. The police and the prosecuting attorney, believing that K had killed M, charged K with murder. K also believed he had killed M. The case is tried before a judge who is sitting without a jury. The judge has presented to him the evidence offered by the eye witnesses, who saw K and M go out in the boat and saw K return alone. He also has the proffered evidence of K's confession to the police. Nothing is presented that raises any inference about M's escape, and the judge knows nothing about that. You are that judge. How will you proceed and what will be your judgment?

FINAL EXAMINATION IN CRIMINAL LAW (LAW 5)

First Semester 1945-1946

Dean Harno

PART II

There is no limitation on your time on these questions. You should be able to finish within two hours.

1. R, after night, was walking down a dark street when he was accosted by S, who said gruffly: "This is a stick-up. Give me your wad." R acted as if he were going to get his pocketbook but instead drew a knife, knocked a revolver from S's hand and attacked S. R was clearly getting the better of S and had wounded him so that blood was flowing freely when K came upon the scene. K drew a revolver and called upon them to stop fighting. R, not fully realizing K's intention, turned upon K and assaulted him with the knife which he (R) still held in his hand. K, being in grave danger, shot and killed R. S, who by that time had picked up the revolver R had knocked from his hand, shot at K, missed and then ran away down the dark street. K called upon S to stop, and then shot and killed him as he was running away.

Analyze these facts fully.

What is your judgment relative to the criminal liability of K: (a) for the killing of R, and (b) for the killing of S?

2. A statute provides:

"Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, and who shall be a citizen of the United States, above the age of twenty-one years, shall be entitled to vote."

The statute goes on to provide that, "if any person, knowing himself not to be a qualified voter, shall vote at any election," he shall be guilty of the crime of illegal voting, etc.

J voted at an election after having been in the county but sixty days and after having been in the election district but twenty days. He was arrested under this statute, and set up the defense that he in good faith believed he was entitled to vote. Assuming that he can support his contention with sufficient evidence, do you believe he has a good defense? Give your reasons.

3. D, who had suffered many hardships, was unable to control his appetite for drink and often drank to excess. One night while under the influence of drink so that his mind was confused, he got into his car and, while driving erratically and at a high rate of speed, ran over and killed a man. He was arrested and charged with manslaughter. Analyze these facts as to the probabilities for conviction or acquittal.

4. C, who bore ill will toward F, set a spring gun in F's tool shed. The spring gun was discovered and no one was hurt. Assuming that these are all the facts, what criminal action, if any, do you suggest? If you were defending C, what defense would you set up? Analyze.

5. A statute provides:

"Every male person of the age of seventeen years and upwards, who shall have carnal knowledge of any female person under the age of sixteen years and not his wife, either with or without her consent, shall be adjudged guilty of the crime of rape."

G, a young woman, was fifteen but appeared to be at least eighteen. B, a young man, was twenty. B did not know G's age but believed her to be eighteen. At a party, attended by both B and G, someone without B's knowledge put a drug in B's food which resulted in his mind's becoming confused. While in that state, he had carnal relations with G, who consented. B was charged with rape. His defenses were: (a) that he believed G to be over sixteen; and (b) that he had no memory of the act. Give your opinion on these defenses.

EQUITY

(LAW 10)

NAME _____

NO. _____

FINAL EXAMINATION IN EQUITY (LAW 10)

Second Semester 1944-1945

Professor Holt

ESSAY PART

Defendant newspaper corporation published a story, "Stopping a New Guinea Cannibal Feast," stated to have been written by P, a Greek geographer and anthropologist. He had not in fact written the story or participated in the events described. Has he any cause of action?

FINAL EXAMINATION IN EQUITY (LAW 10)

Second Semester 1945-46

Professor Holt

GIVE REASONS FOR YOUR CONCLUSIONS.

In a bill of complaint filed against the Board of Police Commissioners of the city of X and the Chief of Police, P alleged that he had been charged with the commission of a crime in X and arrested. He further alleged that the police had caused his photograph to be taken, that it had later been ascertained that he was innocent of the crime charged, but that the Police Commissioners and the Chief of Police acting under order of the Commissioners had refused to surrender his photograph to him, but had stated their intention to place it in their rogues' gallery. The bill prayed that the respondents be enjoined from placing the photograph or any copy thereof in their rogues' gallery. Demurrer. What disposition?

EVIDENCE

(LAW 8)

FINAL EXAMINATION IN EVIDENCE (Law 8)

Summer 1945

Professor McCaskill

1. In a damage suit by P against the Illinois Central Railroad Company, P claimed to have sustained serious injuries, internal and external, in a train wreck. The doctor who treated him following the accident was dead at the time of the trial. Plaintiff called Dr. Int, an interne at the hospital to which P was taken. After saying he remembered P's being at the hospital while he was an interne, he was asked to state what he observed as to P's ailments and physical condition. He said he had only a faint recollection, and he could not remember just what P was being treated for nor his condition at various times. P's attorney then handed the witness three sheets of stiff paper with writing on them, and asked him to look at them and state whether they refreshed his recollection. The railroad's attorney objected to the witness' being shown papers unless they were written by him, and until they were shown to adverse counsel with an explanation of what they were. The judge then asked the witness: "Did you write those papers, or see them written while the matters in them were fresh in your mind?" The witness said he had not written the papers, nor seen them written, but that if they were hospital records kept by the nurses they might refresh his recollection. He could not tell without looking at them. Over objection of the railroad's attorney, the witness was permitted to look at the papers. He said he recognized them as records of the hospital, but that none of the entries were his. After reading them over, he said he recalled P's case very clearly. Still over objection, he was then permitted to narrate details of P's injuries, his physical condition at various times, and his progress until discharge from the hospital, all of which he said he personally observed and now recalled. Discuss the correctness of the court's rulings.

2. Suppose in the above case Dr. Int had said he had no recollection of P's ailment or treatment, but that he personally wrote up the hospital records on his case at the time, and that they were true records, but that he still had no recollection as to P's case even after looking at the records; that P's attorney then offered the records in evidence; that the railroad's attorney objected on the grounds (a) they are hearsay statements of a person not in court nor subject to cross-examination, the doctor's absent personality not being the same as a personality with a memory; (b) that they are not a shop book, nor are they shown to be regular entries in the course of business, and that the person who made them is not dead. Should the records be received in evidence? Explain.

3. Suit by P, a child 4 years old, by its mother as next friend against the Greyhound Bus Company for injuries sustained in a bus accident, the injury claimed being a fracture of the skull causing pressure upon the optic nerve, and permanently affecting the vision of the child. The mother testified that she was with her child in the accident; that the child had a cut over the left eye and a lump on the left side of its head; that it seemed dazed, and then cried and held its hand up to the left side of its head. The mother was also bruised. Both were taken to a hospital, but were discharged after one day. She said the child seemed nervous, and cried a lot, and had a funny look in the eyes. She said that upon

the recommendation of Mr. Sharp, plaintiff's attorney conducting the trial, she took the child to Dr. Ross for examination. Sharp said the doctor was a specialist; that after the first examination the doctor advised that X-ray pictures be taken of the child's head, suggesting a particular roentgenologist; that this was done; that Dr. Ross after looking at the pictures advised her to bring the child back for treatment; that she went to Dr. Ross about once a month up to the time of the trial, 18 months after the accident, and that each time he put some drops in its eyes, and told her to keep the child as quiet as she could. Thereafter Dr. Ross, called by plaintiff, testified that upon the first examination of the child he gave no treatment and prescribed none; that at that time the mother gave him a history of the accident and bruises on the child, and a history of its previous health; that he had had experience in reading X-ray photos of injuries; that the picture of this child's head showed a fracture of the inner plate of the skull, pressing against the optic nerve; that he then began treating the child, the treatment consisting of drops of boric acid in the eyes once a month and rest; that the child's eyes were crossed, due, in his opinion, to the injuries received in the accident its mother had told about; that the condition did not improve under his treatment, and, in his opinion, would be permanent. The doctor also, in response to questions, told the jury what the mother had told him about the accident, cuts, bruises and previous health condition of the child. All of the doctor's testimony was let in over defendant's objections that the opinions invaded the province of the jury; that they were based upon hearsay; that the doctor repeated the hearsay to the jury; and that the doctor's opinions, if admissible at all, should have been in response to hypothetical questions; and that he was not an attending physician within any exception to the hearsay rule. Discuss the correctness of the rulings.

4. In a suit between P and D, the terms of an oral contract were in dispute. W, a witness called by D, upon direct examination stated a version of the contract at variance with that narrated by P and his witnesses. On cross-examination by P's attorney, he denied having said in Hogan's saloon to X and Y, about three weeks before the trial: "That guy P done me dirt, but I'll get even. He's forgot I was there when he made his contract with D. I was too far away to hear what was said, but when you want 'em to, your ears can hear a lot of stuff a long way off." After W was dismissed from the witness stand, and had left the court room, P's attorney called X and Y to the witness stand and asked them if they were present in Hogan's saloon with W about three weeks before. Both replied they were. Each was then asked: "Did you hear W say anything about a contract between P and D?" The court sustained objections to these questions on the ground that they called for hearsay. P's attorney then put to each the question whether at such time and place they had heard W say the words W denied, on his cross-examination, having said, repeating those exact words to each witness. The court sustained objections to these questions as calling for hearsay, and on the additional ground they were leading. Discuss the correctness of the rulings.

5. Suit by P, a pedestrian crossing a street intersection, against D for personal injuries received, as claimed, through the negligence of T, driver of one of D's trucks. D was not present at the accident. Upon the trial the following rulings on evidence were made:

(a) F, a witness called by P, stated he was at the scene of the accident. Over objection, he said his attention was called to it first by hearing a voice, whose he did not know, say loudly: "That truck is going too fast. Hey, driver!"; that immediately thereafter he heard a screeching of brakes, and as he looked around, his back being to the crossing, he saw the truck strike, and knock down P at about the middle of the street.

(b) F stated that P was under the truck when it stopped; that T, the driver of the truck, helped pull P from under the truck; that P was unconscious at the time; that an unidentified bystander said to T, pointing at P, "Your reckless driving killed him", and that T, wringing his hands, and crying, said: "I didn't see him. Is he dead? Why didn't I drive slower? The brakes were out of repair." The court overruled motions to strike out the statements of the bystander and of what F heard T say.

(c) P on the witness stand said that after he got out of the hospital he went with his attorney to the office of John Bull, an attorney; that D was there, and a Mr. Keene, a claim agent of an insurance company; that there was a discussion, all participating, as to what P would take to settle his claim against D; that D there said to John Bull: "Heck, T was to blame, give him \$3,000"; that Bull said: "Shut up, you fool". The court refused to strike out the statement of D: "Heck, T was to blame", but did strike out "give him \$3000" and "Shut up, you fool" as confidential communications between attorney and client. He refused to grant a mistrial because P told the business of Mr. Keene.

Discuss the correctness of each of the rulings made.

6. Suit by X, administrator of the estate of P, deceased, against Y, administrator of the estate of D, deceased, to recover damages for the wrongful death of P. The action survives against D's administrator under Illinois statutes, and the only question is proof of liability of D. D was the owner and driver of an automobile in which P, M and N were riding as guests. The automobile collided with a freight train at the crossing of a highway and the railroad right-of-way on a dark night. P and D were both killed, though P lived for half an hour following the accident, and D for two days. M and N were seriously injured, but survived, and each has an action for his injuries pending against the administrator of D. In the suit by X, administrator, against Y, administrator, M was called as a witness. Defendant's attorney objected to any testimony by him concerning the accident on the ground that D was dead, and M was barred under the statute from testifying to anything concerning the dead man's actions. The court overruled the objection, and M testified that D was driving about 60 miles an hour approaching the crossing, and did not slow down as he approached it; that he, M, heard a train whistle about 10 seconds before the crash. Plaintiff's attorney then asked M if he heard or saw P do anything before the crash. The court overruled an objection to the question, and M answered: "Several times before the crash I heard P say to D: 'Slow down, you are driving too fast. Do you want to kill us?'"

A motion to strike on the ground the statement was hearsay, and that it was a personal conversation with a deceased who could not refute it, was denied. N was then called to the stand, and, over objection, was permitted to state that after the crash he and P were lying together in the wreckage of the automobile; that P was groaning and spitting blood, and between gasps said: "I am going to die soon. Remember I told D to slow down. Tell my wife I was not to blame."

Discuss the correctness of each ruling.

7. In the case stated in No. 6, plaintiff also called as a witness Q, who testified he was a neighbor of P's and had often ridden with P in automobiles, both when P was driving and when other persons were driving. Then, over objection, Q was permitted to testify that P was always very careful when riding in automobiles; that when he drove he always drove at moderate speed, looked to right and left as he came to cross streets, and always came to a full stop at stop signs and before crossing railroad tracks; that when other people were driving he was something of a back-seat driver, always suggesting that the driver be careful if he were driving at all fast or failed to slow down approaching crossings. Q was not at the scene of the accident. Discuss the correctness of the ruling, assuming defendant assigned every possible objection.

1. In a suit by Peters against Downs evidence introduced by Peters tended to show that in consideration of a conveyance by Peters to a daughter of Downs, the latter had promised orally to pay Peters \$1,000 on the date of the entry of American troops into Berlin, and \$1,000 annually thereafter until \$5,000 had been paid; that Peters had made the conveyance to the daughter of Downs, and that Downs had paid Peters nothing though often requested. Downs testified he made no such contract. The judge instructed the jury that if it believed Downs had made the promise, from the evidence heard, and that Peters had made the conveyance to Downs' daughter, then the jury could determine from its own knowledge, without evidence from witnesses, whether and when American troops had entered Berlin, and that if they found there had been such an entry their verdict should be for Peters for \$1,000 and interest at the rate of 6% per annum from the date of such entry to the time of their verdict. The jury found a verdict for Peters for \$1030.00. Discuss the correctness of the court's action in giving the above instruction to the jury.

2. In a suit by Pike against Dunn to recover for odd jobs of work done at various times at an agreed price of sixty cents per hour for labor performed, Pike testified on his own behalf. Under questions from his attorney he narrated the kind of work done, and that Dunn had promised to pay him at the rate of sixty cents per hour. He was then asked to state on what days he had worked, how much time he had put in each day, and on what kind of work. Thereupon Pike took a paper from his pocket and started to read from it. Dunn's attorney objected that no foundation had been laid for reading from the paper. The judge then asked Pike if he had any memory of the transactions. Pike answered he knew in a general way what work was done, but had no detailed memory of dates or amounts and kind of work done on each date, but that they were on the paper he had. Asked when the items were entered on the paper and the circumstances of the entries, he said he had made the entries of work done at the end of each day in a pocket memo book he carried, but that it contained entries also for work done for other people, and that the evening before the trial he had gone through this book and copied on this piece of paper the items of work done for Dunn. Asked where his original memo book was, he said it was at home. Thereupon Dunn's attorney renewed his objection to reading from the paper on the ground it was not made at the time but was a copy, that testimony from it was not memory nor knowledge of things now known by this witness. The court asked Pike if a reference to this paper would refresh his memory, and Pike said it would. Thereupon the court overruled the objection and told Pike he might look at the paper but not to read from it. Pike's attorney then asked about work on particular days. Before answering, Pike, over objection, consulted the paper on each item. The court overruled objections to his doing this. Discuss the correctness of the rulings.

Suppose Pike had answered he had no recollection whatever as to the work, but that he set down the items each day correctly when they were fresh in his mind, and that the paper he had was the paper he had made the original entries on; how, if at all, could Pike make the required proof of work?

3. Action by farmer Potts against the Illinois Central Railroad for killing stock of Potts which had strayed upon the railroad tracks from Potts' fields. A statute imposes on railroad companies the duty to erect and maintain sufficient fences along their rights of way. It was charged in the complaint that the fence maintained between Potts' fields and the Illinois Central right of way was not of sufficient height to prevent stock from jumping it, and that in places the fence was out of repair and defective. Green, a witness called by Potts, testified he was a bond salesman who, before Potts' stock was killed, had visited Potts' farm a number of times trying to sell bonds to Potts; that he had often had to find Potts in the

fields, and that he had noticed the fence separating the railroad from Potts' fields. Asked to state what he saw about the fence he replied: "In my opinion a cow could jump it in a half dozen places." The railroad's attorney moved to strike the answer, but the court said: "Let it stand." On cross-examination as to heights, he replied he was not very good at estimating heights, and would not care to venture an opinion in feet and inches, but he said the fence was definitely lower in some places than in others; that it was a rail fence, and some of the top rails sagged in the middle. Asked if he had ever farmed or worked with stock, he said he had not. Potts obtained a verdict against the railroad, and it assigns as error the court's refusal to strike Green's answer that a cow could jump the fence in several places. The stock killed were a cow, a horse, and two goats. Discuss the correctness of the court's ruling.

4. (a) In an action to recover damages for personal injuries received in an automobile accident, Dr. Munson was called as a witness to testify as to plaintiff's injuries. He stated that he had practiced medicine for thirty years, and that he had often used X-ray photographs as a basis for treating ailments not visible to the eye; that in May 1945, plaintiff came to his office with Mr. Black, plaintiff's attorney, and at the request of Mr. Black he examined plaintiff, interrogated him about his symptoms, and obtained from him a history of injuries received in an accident about a month before; that he advised an X-ray of his spine; that he saw the X-ray picture taken by Dr. White, an expert in taking such pictures, and that it was taken in a proper manner by a proper machine; that Dr. White developed the picture and handed it to him, and that he used it in diagnosing plaintiff's ailment; that it showed a dislocation and slight fracture of one of the vertebrae, with pressure on the spinal cord; and that, at plaintiff's request, he treated plaintiff, prescribed a brace, gave him sedatives for his nerves, and from time to time massaged the spine; that plaintiff was still his patient. Dr. Munson then, over defendant's objection, told the jury what complaints plaintiff had made - exclamations of pain when he pressed on parts of his body, of pains he said he had had at home, and of his condition before he had the accident a month before he came to the doctor. Still over objection, he stated that in his opinion plaintiff's spine condition was due to some external force applied to his spine about a month before he came in for examination, and that, in his opinion, with reasonable certainty, plaintiff would be permanently disabled from any physical work requiring lifting or bending over, and that he would always suffer pain in his spine and extreme nervousness. This testimony of the doctor was objected to as opinion evidence, as invading the province of the jury, as being based on hearsay, and as being the testimony of one who was not a qualified witness to testify to such matters. The court overruled all objections. Discuss the correctness of the rulings.

(b) Had the judge sustained the objections to Dr. Munson's opinions upon the questions as put to him, is there any way in which pertinent opinions of this doctor upon relevant matters could be obtained within the rules of evidence? Explain fully.

5. Suit for personal injuries by Platt against Darr upon allegations that Platt was injured while a passenger in an automobile driven by Darr negligently so that it collided with another car. Platt's attorney called Darr to the witness stand, and elicited from him that he operated a taxicab, that Platt was being taken as a fare by him from Platt's home in Urbana to the Illinois Central station, and that at First and Chester Streets in Champaign there was a collision with another car which completely wrecked Darr's car, overturning it on one side, and that Platt seemed to be stunned or hurt. Darr was then asked:

"Within a few seconds after the accident, before any wreckage was cleared away, while you were attempting to get Platt out of your car, and while the motor of your car was still running, did you not say to Platt, 'Hurry up and get out; the car may catch fire. I am sorry for this. My wiper was not working, and I could not see the other car, but I am insured.'?"

Darr's attorney objected to the question as leading, as calling for hearsay, and because it mentioned insurance, and requested a mistrial because of the mention of insurance. The judge overruled the objections, denied the motion for a mistrial, and directed Darr to answer. Darr then answered: "I was greatly excited at the time, and do not remember if I said anything, or if I did, what I said." Darr's attorney then sought to cross-examine Darr as to how the accident did occur, but upon objection of Platt's attorney, the judge sustained objections that this was not cross-examination, as Darr had not been asked by Platt's attorney how the accident happened. Darr then being excused from the witness stand, Platt's attorney called John Brown to the witness stand, and elicited from him that he heard the crash, and arrived on the scene as Darr was trying to get Platt out of the car, and that he heard Darr talking to Platt. He was then asked:

"Did Darr at that time say to Platt: 'Hurry up and get out; the car may catch fire. I am sorry for this. My wiper was not working, and I could not see the other car, but I am insured.'?"

Darr's attorney objected to this question as leading, as trying to impeach plaintiff's witness, as hearsay, and as mentioning insurance, and again asked for a mistrial because of the mention of insurance. The judge overruled the objections, denied the motion for a mistrial, observing that if anything was said about insurance it came first from defendant, and directed Brown to answer. He answered: "Yes, that is just what Darr said." Platt obtained a substantial verdict against Darr, and the latter has moved for a new trial, assigning the above rulings of the judge as error. Discuss the correctness of each ruling.

6. Upon trial of Dan Drew for the murder of Percy Lightfoot, the state called policeman Kraft to the witness stand, who testified he searched Mary Drew, wife of Dan Drew, after she had visited him in jail and found in her possession two letters, which he identified as exhibits (a) and (b). He said he had kept these over her protest. By another witness, Keen, who said he had seen both Drew and his wife write and knew their handwriting, an opinion was obtained that exhibit (a) was in Drew's handwriting and exhibit (b) was in Mary Drew's handwriting. The state then offered exhibits (a) and (b) in evidence. Exhibit (a), purporting to be to Mary, said: "Tell Henry to keep mum." Exhibit (b), purporting to be to Drew from Mary, said: "I may not be permitted to see you. If I am not, I told Henry, and he is hiding out. I will never tell what you did to that Lightfoot skunk." Drew's attorney objected to the admission of these exhibits on the ground that confidential communications between husband and wife were privileged, and that use of these exhibits was compelling Mary to testify against her husband. What rulings should be made, and why?

7. Upon trial of Duggan for the larceny of a described Buick car, alleged to be the property of Owens, Wells, a witness for the prosecution, testified he bought a described Buick car from Duggan, the description being that of the alleged Owens car. Wells was then asked if he had been told by anyone who owned this car. When Duggan's attorney objected that this called for hearsay, the judge, outside the hearing of the jury, asked the prosecutor what he expected to bring out by this and subsequent

questions. The prosecutor replied that Wells would testify that during the negotiation for the sale of the car to him Duggan said: "My father bought this car from a Buick dealer, and willed it to me. I'm selling it because I need money badly;" that a few days later Owens went to Wells' house and, on seeing the car, said to Wells: "That is my car;" that Owens then suggested to Wells that they see Duggan, and, at Duggan's home, Owens said to Duggan: "That Buick you sold Wells was stolen from me; that Duggan then got mad and shouted to him and Owens: "Get out of here. I'm not talking." How much, if any, of what Duggan and Owens said to Wells, or in his hearing, should the judge permit Wells to state over objection that it is hearsay? Give reasons.

8. While digging in his garden Dawson dug up an earthen jug containing \$5,000 in gold coins, all bearing dates before 1920. This realty had formerly been owned by an eccentric recluse who lived upon it alone, and died there. Upon hearing about Dawson's find, the next of kin of the deceased recluse had an administrator appointed for his estate, who brought suit against Dawson to recover the gold found by him as belonging to the estate of the deceased, on the theory that deceased buried it there for safekeeping. Assume the theory is sound, if proved. To prove it, Walker was called to the stand by the administrator. He stated that he had known the recluse during his lifetime, had often seen him write, and knew his handwriting. He was shown a book containing writing, entitled "My Diary," and asked to examine the handwriting therein. He stated that it was all in the handwriting of the deceased recluse. Under date of June 3, 1919, there were two pages of writing. The administrator offered in evidence these two pages of the book. Upon being shown the pages, Dawson's attorney objected to their admission "because every statement therein is hearsay." The pages read:

"Ned Brown called today. Was worried about what to do with money got from an insurance policy. I told him I had put my money in gold and buried it, and that I was going to keep on doing it, and he had better do the same. He asked me how much I had buried, and I said, 'A lot'. I don't trust anybody. I must get another jug tomorrow."

How should the judge rule upon the objection made, and why?

9. Doe, on trial for bank robbery, objects to proceeding with the trial on the ground that, although he has often demanded it, he has been deprived of a razor with which to shave, and that he is compelled to come into court with a beard and thereby resemble, to that extent, the man seen by the bank cashier who was held up; that he has been held without bail in jail, and without a razor, for two months, and has been compelled to exhibit himself with a beard to several persons who claim to have seen the robber in the bank, and that by this conduct of the officers he has been compelled and is being compelled to be a witness against himself. The court has denied his motion for a continuance and a razor. Upon the trial, the bank cashier is asked to describe the man who robbed him. He describes him as a man with a rough black beard about two months old, with a mask over his eyes. He describes the mask. The prosecuting attorney then produces a mask and asks the witness if that is the kind of mask worn by the robber. He says it is. The prosecutor, handing the mask to the defendant, tells him to put it on. Defendant's attorney objects to the request in the presence of the jury, and asks for a mistrial. The court denies the mistrial, but says he cannot compel the witness to put the mask on. Thereupon, over protests, an officer puts the mask on defendant, and asks the witness to say whether he sees the robber in court. The witness, pointing to defendant, says "That is the man." Defendant's renewed motion for a mistrial is denied. Defendant is convicted. Upon appeal he claims error in the rulings of the court below. Should there be a reversal? Why?

10. Indictment in a Federal court of Doster for illegal possession and sale of opium. Upon the trial Richard Wells testified he found his son smoking an opium pipe, and took his son to the police station, and from there to the office of the U. S. District Attorney. He said he talked to someone there behind a desk. He did not know who it was. Soon a man he had not seen before came up and said "Come with me;" that he went with this man who was dressed in citizen's clothes to an apartment at 725 Polk Ave., Chicago. On the door was the name Doster. The door was locked. The two men broke the lock, searched the apartment, and found a can with a white substance in it. The witness then identified a can and its contents as the same can and the same substance. He said the man told him to keep the can and substance until asked to produce it, and that he had. He said he did not know who that man was, and had not seen him since. After a chemist had testified the can was a common container for opium, and the substance in it was opium, both were offered in evidence. Defendant objected, and moved to suppress the can and contents, and to strike out the testimony of Wells. The judge denied the motions. Doster took the witness stand in his own behalf, said he had been subpoenaed to testify before the grand jury, and by the grand jury had been asked where he lived, and that he had said 725 Polk Street, Chicago, but had declined to answer further questions. At the close of the trial this had not been denied. Defendant asked that he be discharged from custody, and the indictment be quashed, because he was interrogated before the grand jury and gave testimony as to his residence. The court denied the motion, and defendant was convicted. Defendant appealed. Were any reversible errors committed?

Name _____

No. _____

FINAL EXAMINATION IN EVIDENCE

College of Law, Univ. of Ill.
 Summer, 1946
 Hubert Winston Smith

PART II: DISCUSSION QUESTIONS

Read each question carefully and answer it deliberately before going to the next question. No premium will be awarded for fast penmanship. Those who have four questions to answer should finish these in between 1 hour, 30 minutes and 1 hour, 40 minutes. Those who have six questions to answer, should complete the examination in between 2 hours, 20 min. and 2 hours, 30 min. Thirty minutes additional will be allowed if required. Papers not turned in by that time will be subject to a small but increasing penalty.

Put yourself at ease and try to write distinctive, logical answers. Do your utmost to make a noise like a lawyer. Perception of the many legal points involved is more important, by far, than lengthy discussions of single points. One good way of indicating a problem is by a series of topical headings, each more specific than the preceding, thus: Examination of witnesses: Impeachment: Prior contradictory statement (in writing): Whether proponent is entitled to a charge directing jury to treat same as primary evidence or whether the only proper charge is that the p.c. statement is to be considered for impeachment purposes, and no other.

Historical view:

Break-away tendency:

Argument on principle (solution I prefer)

P.S. Now then, boys and girls, up and at 'em!

H.W.S.

I.

Prosecution for murder, in the Federal District Court, charging Boston Blackie with killing Dan McGrew, a police officer in Kankakee, on July 4, 1946. The government's contention was that accused had long been engaged in the narcotic traffic and at the time of the fatal episode was carrying contraband drugs in his Buick car; that decedent, a State police officer, had halted him for questioning and that thereupon D produced a pistol and shot him. Defendant claimed that he was at home in Chicago at the time of the shooting.

The government offered to show that the abandoned Buick car was registered in D's name; that witness "X" saw two men run from the Buick car, one of them with a smoking pistol in his hand, jump into a nearby Ford and drive away at a high rate of speed; that the car came by the corner where X was standing and X could see that the man who had the pistol was now driving; that X had later been called to the police station where D (alone) was brought into his presence and he was asked: "Is this the man you saw run away following the shooting in Kankakee on July 4th?" and that he promptly replied "Yes." The State offered to prove that D had been convicted three times previously for violation of the narcotic laws; that detectives were able to gain access to D's apartment after they had arrested him in Joe's pool-hall and there found a can of opium and a letter dated July 1, 1946 reading: "Please speed up deliveries of stardust to Kankakee. Mike." They found on the bureau a sealed, stamped letter addressed to Mike Bonno, Box 404, Kankakee, Ill. which contained a message dated July 3, 1946, reading: "Dear Mike: Hold your horses. I'm coming to K on July 4th or bust. B. Blackie" Twelve hours after D was arrested and while he was awaiting interrogation by detectives, D attempted to commit suicide. He was rushed to the hospital and put to bed on the general wards. A psychiatrist, hoping to relieve D's mental turmoil, gave him an injection of sodium pentothal, not getting D's consent in advance because "D appeared to be irrational." Ebenezer Bean, retired fire marshal, was in the next bed recovering from a coronary thrombosis and not knowing of the injection, tried to strike up a conversation, whereupon D began to talk in an excited manner and gave a complete account of how he shot and killed Dan McGrew. After D became conscious, he was well oriented and apparently completely well but he denied any connection with the shooting. After having spent 48 hours in the hospital, D was taken to the Hotel Parroquet. Detectives brought in Smoky Dawson, long known as a dope peddler, and in the presence of both suspects read a full confession wherein Dawson implicated himself and Blackie. Dawson said: "That's straight goods." Blackie said: "Better watch out what you say, Smoky!"

Blackie's fingerprints were then taken over his protest and were found to be the same as those on cans of opium found in his room, taken into custody, and now offered in evidence at the trial. He was interrogated, without cessation, by State police for 36 hours, relays being used, but he was fed regularly and allowed 4 hours sleep each

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Blackie
 night. At the end of that time Dawson made a full confession of his guilt. Before he signed it, doctors were called in who examined him and pronounced him physically and mentally fit and two prominent citizens testified they were present and heard Blackie say, "I want to sign and get this behind me." Police looked in a well on an abandoned farm, where Blackie said he had thrown the death gun, and found a pistol.

Blackie offered to show that he had sold the Buick car three months previously to Tony Guiseppe and had not driven it since. He claimed he was being framed by Dawson to get him out of the policy game in Chicago. His counsel sought before trial, by proper motion, to get a court order authorizing inspection of the alleged confession by the defense, claiming same was illegally obtained by third degree methods. F.B.I. officers took no active part in the interrogation or marshalling of evidence but were in "constant touch" with the state police activities following a policy of "watchful waiting" as they knew it was a matter of pride with the Illinois police to bring the killer of their buddy Dan McGraw to justice.

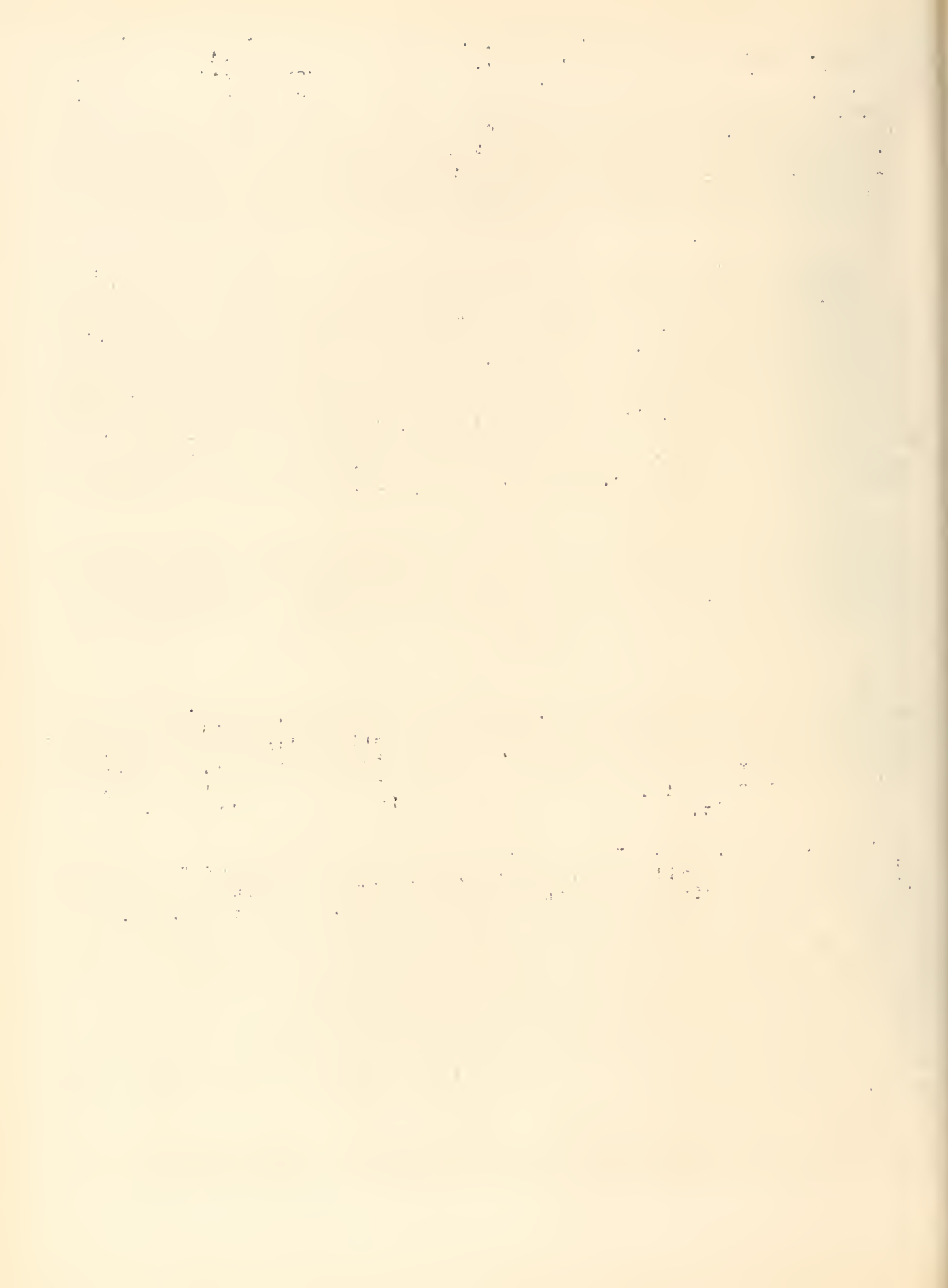
The Federal district judge charged the jury that the accused in a criminal case is presumed to be innocent until proved guilty; that the prosecution must prove all elements of guilt beyond a reasonable doubt (as that term is defined in this charge), but that the burden is on accused to convince you of the truth of his special defense of alibi by a preponderance of the evidence.

Analyze admissibility of the evidence, in outline form, from the standpoint of both prosecution and defense, assuming due diligence of all counsel in respect to making of formal motions, offers of evidence, objections and exceptions. Comment, also, on any other legal aspects of the case.

2.

During the recent war one Zan, an aeronautical engineer, in June, 1942, made a cost-plus contract with the Navy Department under which he was to do experimental work on airplane wings and to conduct test flights. Federal statutes then in force provided for inspecting the plants and auditing the books of all individuals or companies awarded contracts incident to the war effort or to national defense. Zan set up a charge on his books for \$4,000 ostensibly paid to a pilot named O'Brien for conducting test flights in connection with the project. Actually, Zan paid O'Brien only \$2,500. for these services, but before they were rendered Zan prevailed on O'Brien to endorse a blank check and turn it over to him. Zan later filled in \$4,000 on the face of the check and cashed it.

In Oct., 1942, Zan presented a voucher to the Navy for reimbursement for the money laid out in making the tests and included the \$4,000 item, referring to the check. On Oct. 20, 1942, two F.B.I.



agents, B and C, arrived at Z's plant, during his absence, in company of an accountant and inspector of the Navy, and demanded access to Z's books. Zan's company and the Jeronimo Corporation were occupying the same offices. An individual stepped forward and said: "I am Percival Jones, book-keeper for Zan Company. These are Zan's records here (pointing to them); make yourselves at home, gentlemen." The callers then initiated an audit of Zan's books. When Zan returned, he protested against these actions and the continuation of the audit. One of the F.B.I. agents, B, demanded and received the cancelled check for \$4,000 made out to the pilot O'Brien and endorsed by him. B put the check in his special audit file without then removing it from Z's plant. On Dec. 1, 1942, B and C swore out an affidavit on the basis of which a search warrant was issued for Zan's books and papers, including the check, and these were taken under the warrant.

The affidavit to the search warrant failed to show probable cause for any belief that Zan had committed an offense.

Zan was indicted for violation of Sec. 35(A) of the Criminal Code, 18 U.S.C. Sec. 80, 18 U.S.C.A. sec. 80, which, in brief, makes it a criminal offense knowingly to file a false, fictitious or fraudulent claim against the government, and provides by way of punishment, a fine of \$10,000., imprisonment for not more than ten years, or both.

The Government offered the check in evidence. It also offered evidence tending to prove that Zan had committed independent frauds against the government under his war contract. This additional evidence admittedly was secured by F.B.I. agents through gentlemanly, but persistent interrogation of O'Brien, after identifying him as endorser of the check. O'Brien gladly cooperated and supplied leads which enabled the F.B.I. to uncover the other frauds.

Discuss the admissibility of this evidence, assuming that all counsel have made timely tenders of evidence, objections and exceptions and have shown Wignorean astuteness.

3.

Action by Jonathan Brown (personally and as administrator) under Wrongful Death Act for death of his wife and injuries to himself allegedly due to negligent operation of a truck owned and operated by the Baron Munchausen Beer Company.

Plaintiff called President Ruddyglo of B-M-B to the stand and forced from him an admission that when the accident occurred, Ole Olson, the truck driver, was delivering 20 kegs of beer to Urbana. Plaintiff also probed Ruddyglo as to the condition of the truck's brakes and horn. According to plaintiff, he had turned a corner to the left just as the lights were changing, thus coming into the path

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of the truck which was then only 12 feet away. But according to eye-witnesses called to the stand by P, when P made the turn he still had the green light and the truck was 30 yards away coming down a hill toward the intersection at a high rate of speed; that the truck was weaving across the middle line of the highway and did not abate its speed before it collided with P's car.

Plaintiff offered the testimony of by-stander, Doe, that immediately after the accident the truck driver, Olson, got down from his cab, visibly excited and exclaimed: "Good grief, I've killed a woman. I told the boss the brakes on this truck are no good!" Plaintiff also offered a witness, Jim Doak, who testified he was driving on the same highway a quarter of a mile from the scene of the accident when the beer truck passed at a high rate of speed, weaving on the road and that he jocularly commented to his comrade: "That guy must be drunk or else his truck needs to go into show. I daresay he'll have a wreck before he goes much further!" The witness testified that a minute later he heard a crash, came up to the site of the accident and saw the same beer truck had almost demolished a new '46 Chevrolet Sedan. Plaintiff also offered to show that defendant voluntarily paid all hospital and doctor's bills. Plaintiff offered a certified copy of his last income tax return as evidence of his annual earnings. He put a medical man on the stand who offered to testify: that Brown came to him for treatment complaining of terrific low back pain due to being hit by a truck running on the wrong side of the road. That thorough medical examination showed a transverse fracture of certain thoracic vertebrae and damage to the spinal cord; that Brown would never be able to perform manual labor again; that he might develop a traumatic neurosis or certain other named complications and that he would be certain to feel intense pain, on bending, for the rest of his natural life which would undoubtedly be shortened by as much as possibly ten years due to his injuries.

Discuss admissibility of the evidence assuming due diligence by all counsel, and the making of every proper offer of evidence, objection and exception.

4.

Action on behalf of Bruce Lindroth, a 14 month old baby, against Knapp-Monarch Company, the manufacturer, and Walgreen Company, the seller, of a certain vaporizer, for severe burns allegedly suffered by the infant in a fire resulting from defects in the appliance. (A vaporizer is a vessel heated by electricity, which is designed to direct medicated vapor in concentrated form toward the patient.)

Plaintiff's evidence tended to show that the infant had a cold; that its mother "A" went to her local Walgreen store and asked for a vaporizer; that a clerk, "C" (wearing a "Walgreen" cap) produced a cardboard box, opened it and produced for X's inspection a vaporizer

labelled "Kwikway"; that X asked C if there was a "shut-off" on it; that C replied that it had no shut-off, but that the vaporizer "is good for about two hours," adding "It holds enough water, it can't boil down." X then asked the clerk: "Well, are you sure it doesn't have to be watched all the time? I have one at home that has an automatic shut-off on it, and I have never had any trouble with it. Will this be safe to leave?" That C replied: "Yes, I am sure it is safe for at least two hours." That X bought the appliance in reliance upon C's statements, took it home and prepared to use it. On the outside of the box she read these words: "Quick, safe, no-flame, electrical." That X read the enclosed circular containing directions before using the vaporizer and this stated: "No danger from flame." That X then set the vaporizer up near baby's bed and got it going in accordance with directions; that when she returned to the room fifteen minutes later to check the appliance, the vaporizer was functioning properly; but that 45 minutes later, a neighbor screamed "fire", whereupon X ran upstairs and found the room aflame, her baby burned and the vaporizer (which was introduced in evidence) partially melted away. On the bottom of the vaporizer appeared a patent number. Plaintiff offered in evidence a certificate of the Commissioner of Patents, covering the application and letters patent in respect to that number. The certificate showed that the application was filed by William H. Fischer, St. Louis, assignor to Knapp-Monarch Co., St. Louis, and the application of the inventor, Fischer, contained, among other things, these statements: "When the water W in the receptacle 12 has been completely vaporized, there is danger of overheating and damaging the heating element H. I therefore provide a thermal cutout comprising contact springs 66 and 68." The Kwikway purchased contained no thermal cutout. Plaintiff qualified Z as a safety engineer and he offered to testify that thermal cutouts are simple, practical and inexpensive safety devices designed to interrupt an electrical current automatically by breaking the circuit when a certain temperature has been reached, and that such thermal cutouts have long been used in electric flatirons, refrigerators, etc. and are well adapted to use in a vaporizer. "C" when put on the stand testified that she had no authority from Walgreen's to guarantee goods and that her only remarks at the time of the sale were: "This vaporizer has no cut-out, such as you asked about, and I think you should know that before you buy it." In impaneling the jury, plaintiff's counsel was permitted to ask each prospective juror whether he himself, or any of his relatives, friends or acquaintances was an underwriter in Lloyd's insurance company or engaged in adjusting claims for that company from time to time.

X offered to show that she had suffered severe mental anguish through fear that the baby's burns might become cancerous (a risk she had read about in Annals of Surgery in course of her job as a medical librarian.) She also offered to prove that baby's burns were grossly disfiguring, and that a surgeon "Z" she had employed on excellent recommendations, without notice of any incompetency, had been guilty of negligence in treating the case with the result that complications ensued which prolonged convalescence and greatly increased the baby's



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permanent disabilities. She offered "S", an independent surgeon, retained to examine baby for purposes of testifying only. He offered expert opinions as to the usual and customary treatment provided by a surgeon in that community for such burns and indicated that such measures had not been applied in the instant case, etc. He also offered to show how he would have treated the case and to tell other complaints he had heard made by patients of "Z". X offered, also, to prove through P, a psychiatrist, that the grossly disfiguring scars were of a sort that normally produces personality conflicts in a developing child.

Defendants offered evidence that the baby's injuries were completely compensated by insurance taken out by the parents at the time of its birth and that the disfiguring scars could be largely removed by plastic surgery. The trial court granted a motion filed by each defendant praying for an instructed verdict. Defendants, on appeal, argued that since the evidence was highly contradictory and the inferences to be drawn from the testimony showed irresistibly that defendants were not at fault, the trial court correctly instructed verdicts, since no reasonable man, upon weighing all the evidence, could have returned a verdict for the plaintiff.

Discuss the substantive, procedural and evidentiary aspects of this litigation assuming that all counsel showed due diligence in making timely tenders of evidence, proper objections and exceptions, etc.

4--

If you attended Clinic sessions, so certify and skip the next two questions, otherwise, answer them.

5.

Discuss briefly, with particular reference to Illinois law, the leading problems of proof which may arise in connection with questioned document controversies (i.e. cases involving disputed handwriting.)

6.

Discuss the chief problems (evidentiary and legal) involved in the use of firearms evidence (ballistics, powder marks, gunshot wounds, etc.).

FUTURE INTERESTS

(LAW 38)

FINAL EXAMINATION IN FUTURE INTERESTS (LAW 38)

Second Semester 1944-1945

Professor Schnebly

NOTE: Four hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. T died leaving a will duly executed wherein he devised all his property to his daughters, A and B, in equal shares, with this provision, "should B die without children, her portion of my estate is to revert to the other heir of my body." T left surviving him no spouse, and no descendants except the two daughters mentioned. B was sixty years of age. A and B made a contract with D for the conveyance to him of a tract of land left by T. D refused to complete the contract on the ground that the vendors could not make good title. A and B brought suit against D for specific performance. What decree?
2. T died in 1916, leaving a will duly executed, wherein he devised Blackacre to his daughter A for life, and after her death to her children surviving her. All the residue of his property he devised to his daughters A and B in equal shares. A year after the death of T, a child, P, was born to A. In 1918 A conveyed Blackacre to D by warranty deed, and the latter immediately went into possession. A died in 1944. P, the only descendant of A surviving her, asks your advice as to his interest, if any, in Blackacre.
3. In 1935 A duly executed and delivered a deed wherein he conveyed Blackacre to B for life, remainder to such of B's children as should attain the age of twenty-five years. At the date of this deed, B was a woman fifty-five years old, who had two children, of the ages of twenty-five and seventeen. A died intestate in 1940, leaving H as his sole heir at law. B died in 1945, leaving the two children previously mentioned as her only surviving descendants. What interest do the said children have in Blackacre? Would your answer have been the same if all the events above recited had occurred in the period between 1905 and 1915?
4. By his will duly executed T devised land "To A for his life, and at his death to the heirs of his body in fee simple, but if he shall die without leaving issue surviving him, then to B in fee simple." At the death of T, A had a child, C, who was twenty-five years of age. A and C joined in a warranty deed conveying the land to D. C died without issue in the life of A, and A died without issue surviving him. Is B or D entitled to the land?
5. By his will duly executed F gave all his property to T on trust, directing that he should convert and invest the same in proper trust securities, and pay the income to F's son S for his life; and that on the death of S he should distribute the corpus in equal shares among such children of F's daughter D as should attain the age of twenty-one. At the death of S, D was still living, and had three children, of the ages of 25, 20, and 16. Advise T what action he should take in respect to the trust fund.

6. In his will duly executed T devised land as follows:

"I devise Blackacre to A for life, and after his death to B, but if B shall attempt to sell or convey the same before having attained the age of thirty, or if he shall die without issue surviving him, then I devise said land to C in fee."

B was twenty-five years old at the death of T. At his age of twenty-six B conveyed Blackacre by warranty deed to D. Later A died leaving B surviving him. D went into possession of Blackacre. Thereafter B died at the age of twenty-seven, without issue surviving him. C brought an action of ejectment against D. What judgment?

7. The duly executed will of H contained the following provision:

"I devise and bequeath to my wife, W, the house wherein I now reside, together with all the furnishings thereof, to be used and enjoyed by her for the period of her natural life. At her death so much as may remain of said property shall pass to my son S."

S now asks you to advise him:

- (a) The exact extent of the interest taken by W under the above provision;
- (b) Whether he is entitled to demand that W furnish security for the forthcoming of the personal property at the termination of her life interest.

FINAL EXAMINATION IN FUTURE INTERESTS (LAW 38)

Second Semester, 1945-1946

Professor Schnebly

NOTE: Four hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer on a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. T died in 1910, leaving a duly executed will wherein he devised Blackacre to A for life, and after his death to such of A's children as should attain the age of twenty-five. All the residue of his property T devised and bequeathed to M. In 1912, B, a son of A, being then of the age of twenty-two, executed and delivered to X a quitclaim deed purporting to convey all right, title and interest in Blackacre for a consideration of \$2000. A died in 1918, leaving surviving him his sons B, C and D, who were of the ages of 28, 23 and 19, respectively. Blackacre was worth \$10,000. Who are entitled to interests in Blackacre at the death of A? Would your answer be the same if the events above recited had occurred between 1930 and 1940?

2. T died in 1930, leaving a will which provided:

"All my property I devise and bequeath to my wife, W, for her life, and after her death to the children of my brother, A, in equal shares. Provided, however, that if any child of A shall die without issue surviving him, his share shall pass to M."

At the date of the will A had two children, B and C. After the date of the will and before the death of T, two more children, D and E, were born to A. After the death of T, a fifth child, F, was born during the life of W. After B and C had attained their majority, they joined with W in a conveyance to X of a tract of land which had passed under the will of T. B died during the life of W, without ever having had issue. W died. C died six months after W, without ever having had issue. D, E and F survived W and C. Who are now entitled to shares in the tract of land above mentioned, and in what proportions?

3. By deed A conveyed land "to B for life, and after his death to the heirs of his body." At the date of this conveyance B had one child, C. Later a second child, D, was born. C died in the life of B without leaving issue surviving, but leaving a widow, W. Who is entitled to the land at the death of B?

4. By his will T devised a tract of land as follows:

"I devise (description) to A and B in equal shares for their lives, and on the death of the survivor I devise said land to my heirs at law then living."

T's sole heir at the time of his death was H. After the death of A, B and H offered to sell and convey the land to your client at an acceptable price. Would you advise your client to make the purchase?

Final Examination in Future Interests (Law 38), Second Semester 1945-46.
Page 2

5. F made and delivered a deed in 1920, wherein he conveyed land to his daughter, D, for her life, "with power in her to dispose of the fee in the same by deed or by will." F died in 1930. D died in 1940, leaving a duly executed will wherein she provided:

"All the land that I may own or possess at the time of my death I devise to my children X and Y in equal shares, for their lives; on the death of either child, his share to pass to his surviving issue, if any; and if said child shall leave no surviving issue, then his share shall pass to my other child for life and at his or her death to his or her descendants."

X was born in 1922, and Y in 1924. Does the will of D make an effective appointment of the land conveyed by the deed of 1920?

6. In 1930, A conveyed land to B by a deed containing the following provision:

"The grantee herein shall not sell or convey said premises to anyone other than a brother or sister during the five-year period beginning with the date of this deed."

At the date of the deed B had five brothers and sisters. B died in 1932, leaving a duly executed will, wherein he devised the land above mentioned to C for life, and after his death to his surviving children. B predeceased B, leaving three children who survived B. Neither C nor his children were related to B. B left as his heirs at law the five brothers and sisters above mentioned. Who is entitled to the land at the death of B?

T died in 1935 leaving a will wherein he devised Blackacre in the following terms:

"I devise Blackacre to A for his life, and at his death to his surviving children in equal shares for their lives, and on the death of any child of A, his share shall pass to his surviving issue."

The will also contained a residuary clause devising and bequeathing to all property not otherwise disposed of in the will. At the death of A, A was living and had one child, B. After the death of T, a second child, C, was born. A died. After the death of A, a deed was made and delivered by B, C and X, which purported to convey all interest of the grantors in Blackacre to P. Advise P as to the state of his title.

INSURANCE

(LAW 28)

Second Semester
1944-1945

Professor Goble

1. X company issued a life insurance policy to A payable to B, containing the following clause: "This policy shall be incontestable after it has been in force two years from the date of its issue, except for non-payment of premiums." The policy was dated January 1, 1920, and delivered February 1, 1920. On June 1, 1920, the company notified A that his policy was cancelled for fraud and tendered back the premium paid. This the insured refused to take. The insured died November 1, 1922, and the X company filed a bill in equity to cancel the policy for fraud on December 30, 1922. B filed a demurrer on January 15, 1923, setting out that equity had no jurisdiction. Dispose of the case.

2. (a) A policy of insurance for \$10,000 was taken out by H, without power to change the beneficiary, payable to his wife, W, if she survived him; otherwise to his children. At that time H had three children, A, B and C. Later a fourth child, D, was born, after which A died. H and W then assigned the policy to X Bank as security for a debt of \$5,000. W died; shortly after that H died, leaving the debt unpaid. How will the proceeds of the policy be divided between X Bank, B, C, D, and Y, the administrator of A?

(b) Would the result be different if the policy reserved in the insured the power to change the beneficiary?

3. On April 1st, A applied for a policy of life insurance with the local agent of X Co. A passed the medical examination and paid his first premium. His application was sent to, received and approved by the home office. On April 10th a policy was executed and dated April 10, and deposited in the mails directed to the local agent. The application and policy both provided that the policy should not become effective until the first premium had been paid and the policy had been actually delivered to the applicant while alive and in good health, and further it provided that the annual premium would be due on the anniversary of the date set out in the policy (April 10) but allowed 30 days grace. The policy was received by the local agent on April 12, but the applicant had been killed in an automobile accident on April 11. The agent, not being informed of the death of the applicant, sent the policy to his house where it was received by his beneficiary on April 15. Upon the company's refusal to pay after due proof of loss, the beneficiary sued. What are the rights of the parties?

4. (a) What are the rights of a creditor of an insured against the cash surrender value of an insurance policy in the following situations in Illinois:

- (1) A policy payable to insured's estate.
- (2) A policy payable to insured's wife, with reservation of power to change the beneficiary.
- (3) A policy payable to insured's wife without reservation of power to change the beneficiary and without right in the insured to the cash surrender value, or to borrow thereon, but to revert to insured if insured's wife predeceased him.
- (4) A policy payable to insured's estate, but assigned to a creditor to secure a debt.

- (5) A policy taken out and paid for by the wife of insured, payable to her, but containing a clause reserving a power to change the beneficiary.
- (6) A policy payable to a cousin of the insured, upon whom insured was not dependent, policy containing a clause reserving power to change beneficiary.
- (7) When premiums are paid while insured is insolvent.

(b) What are the rights of a trustee in bankruptcy on the same policies, under the Federal Bankruptcy Act?

5. To what extent, if at all, are the policies enumerated in Question 4 (except (7)) subject to the Federal Estate Tax (assuming that the estate is sufficiently large to come within the act)? (Number your answers for convenience in grading.)

6. Some mischievous boys dropped A's coats, hats, dresses and other garments down the chimney of A's house. There was no fire in the furnace at the time. A, not knowing of the presence of the clothes in the chimney, later started a fire. The stoppage in the chimney at first caused smoke to come up into the rooms through the registers, causing damage to drapes and wallpaper; then the clothes in the chimney caught fire. This increased the draft and intensified the fire in the furnace, and the blaze roared up through the chimney and out at the top. The chimney got hot, and blistered or charred mantel pieces and woodwork. Sparks were emitted through a crack in the chimney, causing damage to some valuable pictures. All the damaged articles, including the clothes, were covered by a policy protecting the owner from "direct loss or damage by fire." To what extent, if any, is the insurance company liable on the policy?

7. A owned a house and lot. He effected a \$5000 insurance policy (N.Y. 1916) with X Co. on the building and afterwards contracted to sell the house and lot to B for \$10,000, the deed to be executed in 60 days. Possession was given and \$1,000 was paid on the day of the contract and the balance was to be paid at the time of the execution of the deed. The insurance policy was not assigned, and before the 60 days had elapsed the house was completely destroyed by fire. What are the rights and duties of A, B, and X Co.?

8. A, the owner of a car, gave permission to his son B, sixteen years old, to drive it to a party a few blocks away. Instead of going to the party, B drove to an adjoining town 25 miles away, became intoxicated, and, while driving the car on the street of the town at 75 miles an hour, ran into a car being carefully driven by D, the impact completely wrecking both cars, killing D and injuring B and a companion, C. A had a policy with X Co., and D, a policy with Y Co., protecting them against loss by "collision with any other automobile, vehicle or other object either moving or stationary" and also against "loss from liability imposed by law upon the assured for damages, on account of bodily injuries including death accidentally suffered and on account of damage to others' property ... and to pay and satisfy judgments finally establishing assured's liability." Each policy was also available to "any person while operating said

car with the permission of the named insured." A statute prohibited a person under eighteen years from driving a car, but there was no express provision in the policy exempting the company from liability for violation of the law.

E was appointed administrator for D. B is insolvent. What are the rights and duties of A, B, C, E, X and Y? Dispose of the issues most likely to arise in litigation between the various parties.

9. (a) A, owner of a farm, effected a \$5000 fire insurance policy on the farmhouse. Later he mortgaged the farm to B for \$3000 and at the same time had the agent of the company place a standard mortgage clause on the policy running to B as his interest may appear. A moved out of the house and permitted it to remain vacant and unoccupied for a period longer than that permitted in the policy, and while vacant the house burned. What are the rights of the parties?

(b) Would the result in (a) be different if a simple loss payable clause had been used?

10. Discuss the principal differences between the 1916 and the 1943 New York Standard Fire Policies.

FINAL EXAMINATION IN INSURANCE (Law s28)

Summer Semester 1946

Professor Woodbridge

1. H's father, F, after H's marriage to W, told the couple they could live in one of F's houses as long as they wished. H insured the premises telling the agent he wanted to insure his home. The value of the house so insured was \$5,000 and the amount of insurance thereon was \$4,000. Ten months later after dark H and W had a violent quarrel. H accused W of unfaithfulness and when she taunted him about it, H seized a lighted kerosene lamp and hurled it at her with such violence that it knocked W down and broke the lamp. The oil ignited, the house burned, and W perished in the flames. H made no effort to save W saying death was too good for such a woman, but he did want his fire insurance which the Company refused to pay. H sued the Company for \$4,000. F intervened claiming the \$4,000 himself. What are the rights of the parties?

2. Basing your answers on the addresses given at the Clinic--

(a) How are most arson convictions secured?

(b) Upon whom is the burden of proof to show whether the cause of death is suicidal or accidental?

3. X applied to defendant for a policy of life insurance and in due course the policy was sent to defendant's local agent. In the meantime X had temporarily left town and the local agent was unable to find him. Defendant then learned that X had entered a hazardous occupation and recalled the policy marking it "Cancelled." X was killed shortly thereafter. Is defendant liable?

4. X had secretly and brutally murdered Y. X applied for life insurance without notifying the defendant company of the above fact. A policy was issued. Shortly thereafter X's guilt was discovered and he was tried, convicted, and sentenced to death. The sentence was duly carried out all within one year of the issue of the policy. Is the defendant liable?

5. A life insurance policy contained the following provision, "This policy shall be incontestable after two years from its date of issue except for non-payment of premiums." X applied for a policy of life insurance because he knew he had a serious kidney ailment that might prove fatal within a short time. He knew he could not pass the physical examination so he sent his brother to take it for him, the brother falsely stating that he was X. X died of kidney trouble twenty two months later. The insurance company then ascertained the true facts and refused to pay. Three months later X's beneficiary sued for the face value of the policy. What judgment?

FINAL EXAMINATION IN INSURANCE - pg. 2

6. X carried life insurance in which Y was the beneficiary. There was no power reserved to change beneficiaries. X and Y were both found dead in a wrecked automobile some twenty hours after the wreck. What are the rights of the parties in a contest between X's personal representative and Y's personal representative?
7. X bought a fine house and insured it for \$20,000. Later he mortgaged it to secure a debt of \$15,000. Still later he contracted to sell the house to Y for \$25,000 of which \$10,000 was to be paid in cash and the remaining \$15,000 by the assumption of the mortgage. The house burned after X had made the contract, but before Y took possession. As between X, the mortgagee, Y, and the Insurance Company what are the rights of the parties?
8. (a) What have been the two major developments in the law of insurance within the past five years? How, if at all, are these two developments inter-related?
- (b) What are the advantages, if any, of an insurance trust over a continuous-installment policy?
9. A father conveyed land gratis to his minor son in order to defraud his creditors, but after the conveyance he continued to remain on the premises as before, and insured in his own name the house thereon which was soon thereafter a total loss. As between the son, the father, the father's creditors, and the insurance company what are the rights of the respective parties?
10. B and C were brothers, and X was B's brother-in-law. X took out a policy of insurance on B's life with B's consent for \$5,000. After X had kept up the policy for years he needed some money, so X sold the policy to C for \$2,000. Shortly thereafter B died. B's personal representative and C both claimed \$5,000; X claimed \$3,000 and the Insurance Company denied all liability. What are the rights of the parties?

LABOR LAW

(LAW 50)

FINAL EXAMINATION IN LABOR LAW (LAW 50)

Second Semester, 1945-1946

Professor
SullivanMAXIMUM TIME: THREE HOURS

1. In 1934, the Young Forging Company was operating a plant in which there was no employee organization. An employee in the forge shop interested a group of employees in forming a plant organization. Neither the company nor any of its supervisory employees participated in any way in the initial stages of this movement. The employees had a number of meetings in which they discussed a constitution and by-laws. After they had decided on the form and objects of the association, which was to be called the Employees Council, they asked one of the plant managers to assist them in drafting their constitution and by-laws on the basis of the conclusions reached by the employees. This assistance was given by the manager, and the Council was formed by the employees. It continued to be the association of the employees down to 1943. Although there is no evidence that the company, through any of its supervisory employees, attempted in any way to dominate the Council, the company did furnish a meeting place for the Council representatives, and it paid the members their regular rate of pay during the time they attended meetings and during conferences with the management on rates of pay and conditions of employment. The cost of printing for the Council was paid by the Company.

In March 1942, the company granted a flat 10 cents per hour wage increase to all employees. Shortly thereafter, the International Union of Die Sinkers and United Steelworkers of America (CIO) tried to organize the plant. There is no evidence to indicate that the employer knew of this when the wage raise was granted. Late in April the International Union petitioned the NLRB for an election. The petition was granted, but the election resulted adversely to the International. At this time, the Council ceased to operate. There is evidence that at a later period, a new independent union was organized, and after a subsequent election the NLRB certified the Independent as the bargaining representative in the plant. After the International failed to secure a majority, a few of the most active members of International met with the management and asked for a change in the pay plan, substituting a higher hourly wage for a bonus plan. This new wage policy was put into effect in June 1942.

In June 1943, one of the most active members of the International was discharged for conduct interfering with the war effort. He was employed on a heat treatment furnace, removing forgings from the furnace. The proof indicated that he "cheated" by removing forgings from the furnace before they were properly treated so that he might have 15 or 20 minutes free for other purposes. The evidence shows that during that period he solicited members for the union. It is not denied that his activities did interfere with production. He was discharged. Two other active members of the International were discharged in August 1943 for slowing down production in the die room and urging others to slow down. This slow-down followed the elimination of the bonus pay plan. They also were active in soliciting union memberships. After

two or three attempts to secure the co-operation of these men in increasing production, they were discharged.

The Board is asked to find (1) that the company committed an unfair labor practice under Section 8(2) of the Act in dominating the formation of the Council; (2) that the company violated section 8(3) of the Act in that it discriminated in discharging the three employees for union activity and (3) that it, therefore, violated Section 8(1) of the Act.

What order should the Board enter? Discuss fully.

2. One Venezia was indicted for violating the following federal statute:

"Whoever shall induce any person employed in the construction of any work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined or imprisoned or both." (Thereafter follows the section fixing the amount of the fines and the length of term of imprisonment.)

At the trial there was evidence to show that the defendant was an officer of the XYZ Union which claimed jurisdiction over the laborers in the construction of a very large army base during the late war. Defendant went to the contractor in charge and demanded that 50 union stewards be hired and that these stewards be permitted to enforce the union requirements. Any person not a member of XYZ union who was employed on the project was required to pay to the defendant \$5.00 per week for the privilege of working. There was evidence which tended to prove that any person who saved his receipts from the weekly \$5.00 payments would be given union membership when he presented receipts for \$50.00. As to those individuals, the names were sent in to the international union and their international dues were paid out of the \$50.00 for which the receipts had been kept. The evidence indicated that no union memberships were ever proffered to any others, and no record was ever kept by the defendant of the amounts paid in by the employees. Further, the defendant and his stewards appropriated the money to their own use.

Defendant was convicted under the statute, and he appeals. The conviction was affirmed by the C.C.A., and the Supreme Court granted certiorari.

What result? Why?

3. The X Corporation operated plants in two cities 100 miles apart. In one of the cities, there was a foundry and a machine shop, while in the other city there was a machine shop, an assembly division and a large warehouse. The company, therefore, had machinists, truck drivers,

laborers, maintenance men, etc., in both cities. Other crafts were represented only in one of the two locations. Up to the time of the present controversy, the X Corporation had bargained collectively with the International Association of Machinists (AF of L) and a separate contract was negotiated for each plant. The CIO Steelworkers Union began organizational activity in the two plants, and after some months petitioned the NLRB to determine the appropriate unit for collective bargaining and for an election to determine the representative for collective bargaining. The Machinists Union insisted that the unit be determined along traditional craft lines, and therefore contended that the machinists formed an appropriate unit, but they argued that the Board should include the machinists in both plants in the same unit. The Steelworkers Union contended that the unit should be all employees in both plants. The Independent Union (not company-dominated) insisted that the appropriate unit was the individual plant. (Assume that each of the above unions would be certified as the representative if the unit contended for by each should be selected.)

The employer filed a brief suggesting that since there were many employers in his area similarly situated, multi-plant bargaining was the only satisfactory method, because it would tend to equalize wage rates in competing plants.

(a) Which unit should be selected by the Board? Analyze the factors which lead to your conclusion.

(b) How may this determination be reviewed? What is the scope of review, if any?

4. (a) Since U.S. v. Hutcheson, labor unions are freed from most prosecutions under the Sherman Act. Discuss the area of application of the Sherman Act to labor unions.

(b) The Norris-LaGuardia Act effectively prevents a federal court from granting an injunction in labor disputes. To what extent, if any, may the states issue injunctions in labor disputes? Discuss fully.

5. In a certification proceeding the X Union is certified as the bargaining representative for the employees of the We-Sell-It Department Store. The owner of the store immediately recognized the union, and meetings to discuss the union demands were arranged. The owner stated at the first meeting that he would be willing to discuss any question of wages, hours and working conditions of employees, except one. He said that he would never grant a closed shop. Negotiations continued over some weeks and all matters were ironed out except the union security issue. The Union called a strike and filed a complaint with the NLRB alleging that the store owner had been guilty of an unfair labor practice in refusing to bargain collectively. The store owner hired new help and was able to replace all of the strikers. The Board held a hearing on the complaint. At the completion of the hearing, the Board found that the employer had refused to bargain because he had announced in advance his unwillingness to agree to a closed shop and entered the following order:

"The We-Sell-It Department Store and its owner are hereby ordered to cease and desist from refusing to bargain collectively with the representatives of the X Union, and in any other manner from interfering with, restraining or coercing their employees in the exercise of their rights to form and join a union of their choice and to bargain collectively with the employers. It is further ordered that the store re-employ the striking employees and discharge those persons who were hired to fill the positions of the striking employees."

Discuss the validity of the order.

THE LEGAL PROFESSION

(LAW 25)

FINAL EXAMINATION IN THE LEGAL PROFESSION
(Law 25)

Second Semester 1944-1945

Dean Harno

1. A, an attorney, makes a practice of buying judgments, notes and other choses in action from bankrupt estates for much less than their face value, and then collecting them at a large profit to himself. Is this action by A professionally proper? Give your reasons.
2. X and Y were partners in the practice of law. X was elected State's Attorney but retained his partnership with Y. X, as State's Attorney, prosecuted Z for larceny. Y was retained by Z to defend him. What is your judgment on the professional propriety of X's action? Of Y's action?
3. A law firm has represented a mutual casualty insurance company in several suits and, on behalf of the company, has made substantial payments to claimants. An agent of the company has requested the firm to write him a letter, stating that the company was the insurer of the defendant in a recent damage suit, and that, as attorneys for the company, the firm paid the sum of \$5000 in a compromise settlement of the suit. Such a statement would be true, but the members of the firm know that the agent proposes to exhibit the letter to prospective policyholders and thus use it to assist the company in the sale of insurance policies. Is it proper for the firm to write the letter requested by the agent? Discuss.
4. A local bar association proposes, provided that course is professionally proper, to insert advertisements (so labeled) in local newspapers in the form of educational articles and instructive materials designed to assist and instruct the general public on how and when to consult attorneys. Each of the series would deal with a particular subject, such as drawing of wills, personal injury actions, etc. What is your judgment?
5. A corporation is engaged in the business of adjusting and investigating insurance claims and solicits this business from insurance companies. In the letters of solicitation which it sends to the insurance companies, the corporation states that it can render prompt and efficient service in any part of the country. When the corporation receives a claim for adjustment in a city in which it does not have an office, it sends the claim to an attorney there to be taken care of by him. May an attorney having knowledge of the corporation's methods of solicitation properly accept this employment?
6. A collection agency, a corporation, solicits claims for collection. It has a list of attorneys who have consented to have their names used for that purpose, which it submits to creditors and they are asked to choose an attorney from that list to bring suit on claims which the agency cannot collect without suit. X, an attorney, has his name on this list and is chosen by a creditor to bring a suit on a claim. All his dealings are with the collection agency.
 - (a) Is the agency engaged in unauthorized practice of law?
 - (b) Through what sort of proceeding can this issue be raised?
 - (c) Is X engaged in unprofessional conduct?

7. A lawyer wishes to enter into partnership with an accountant. The partners propose to maintain an office in which the lawyer will practice law and the accountant, accountancy. They propose to divide the income of both. Give your opinion.

8. Explain the procedure in Illinois under which disciplinary proceedings against attorneys are brought.

FINAL EXAMINATION IN THE LEGAL PROFESSION (Law s25)

Summer 1946

Professor McCaskill

"Woe unto you also, ye lawyers, for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers."

Luke 11:46.

The above condemnation by Christ of the law interpreters of his day followed a complaint by one of his listeners that he had included lawyers, by inference, among those who stressed meticulous observance of trifles and slighted judgments upon matters of vital consequence, and who were chiefly intent upon obtaining positions of prominence.

It is interesting to note there was no charge of law breaking, criminal or civil, no charge of immorality according to the accepted standards, and no charge of infidelity to individual clients. The charge seems to have been a failure upon the part of a group to obtain a proper perspective upon its function in society because its members were more intent upon individual benefits and benefits to their union than upon the welfare of society at large.

1. To what extent has there been a change for the better in the legal profession of today?
2. Evaluate statements that the legal profession should be frank and realistic, discarding its hypocritical pretense that distinctions exist between the legal profession and business, necessitating restraints upon the former not necessary in the latter.
3. Evaluate the following as desirable restraints upon improper conduct in the legal profession, indicating whom they would be likely to reach:
 - a. criminal prosecutions;
 - b. disbarment by courts;
 - c. membership in bar associations of various types;
 - d. obedience to the unenforceable;
 - e. published canons of ethics by bar associations.

LEGISLATION

(LAW 14)

FINAL EXAMINATION IN LEGISLATION (LAW 14)

Summer 1945

Professor Weisiger

1. Section 7 of "An Act to revise the law in relation to change of venue" approved March 25, 1874, is as follows:

"Sec. 7. No change of venue shall be granted more than thirty days after the return day on which the defendant is required to appear unless the party applying shall show that the causes for which the change is asked have arisen or come to his knowledge since the expiration of such thirty days."

By an act approved June 8, 1893, the above section was amended by changing the period of time from thirty days to twenty days.

Draft an act that will change the period to forty days.

2. A penal statute provided: "If any person shall abuse any judge or justice of the peace, resist or abuse any sheriff, constable or other officer in the execution of his office, the person so offending . . ." A was indicted for resisting a supervisor of highways in performing the duties of his office. Discuss the question that may arise on motion to quash the indictment.

3. A statute in regard to intoxicating liquor gave power to the governor to remove any officer of the state who willfully failed or refused to perform any duties imposed by the statute, or any officer guilty of drunkenness. The constitution of the state provided for the removal of judges only by impeachment. Should the statute be applied to the removal of a state's attorney for drunkenness?

4. What is meant by "in pari materia"? Discuss the purpose and validity of validating statutes.

5. Discuss legislative sources as extrinsic aids in the interpretation of a statute.

6. Discuss briefly the provisions of the Constitution of Illinois with reference to special legislation.

7. In 1895 a statute changed the common law rule with reference to liability in keeping of animals. In 1905 there was further legislation on the subject and the act of 1895 was expressly repealed. In 1909 the legislature expressly repealed the act of 1905 without any new legislation on the subject. What law was then in force?

NAME _____

FINAL EXAMINATION IN LEGISLATION (LAW 514)

Summer 1946

Professor Weisiger

PART II

Time: 2 Hours

1. On June 6, 1911, a law of Illinois was approved. This law had this title: "An act to revise the laws in relation to coal mines and subjects relating thereto." Section 9 of the law provided: "Every mine employing more than 25 men shall maintain a suitably equipped washroom which shall at all times be open to the employees of the mine." A law approved June 8, 1915, changed Section 9 to read 20 men instead of 25 men. Write a law and its title that will restore Section 9 to its original form.

2. The constitution of a state provided for certain referendum elections to be held on certain propositions as to county government and limited the suffrage to male citizens. A statute of the state, effective in 1874, provided for the qualifications of electors (identical with those provided in the constitution) at all elections, including elections for offices and on referenda created by the constitution and also those created by statute. In 1913 a law was approved giving women the right to vote for all offices created by the legislature and also on all questions and propositions submitted to the electors of cities and villages or other political subdivisions of the state. Separate ballot boxes were to be provided for women. No reference in the law of 1913 was made to the law of 1874.

A bill was filed to enjoin the election commissions from furnishing separate ballot boxes at an election for offices created by the legislature on the ground the Act of 1913 was unconstitutional. Should the injunction be issued?

(Answer may be continued on next page.)

MUNICIPAL CORPORATIONS

(LAW 24)

FINAL EXAMINATION IN MUNICIPAL CORPORATIONS (LAW s24)

Summer 1945

Professor Weisiger

1. A suffered damage from the running away of his horses on a bridge near a building housing the city waterworks. The horses were frightened at the blowing of a whistle in the building to indicate to the employees that it was quitting time. Assuming there would have been liability had the waterworks been owned and operated by a private corporation,
 - (a) Is the city liable for A's damage?
 - (b) Suppose the whistle was blown as a signal for water customers to stop watering their lawns during a fire?
2. State legislation provided that no city should sell any land theretofore used for park purposes unless approved by a vote of three-fourths of the electors of the city. Is this provision binding on a city operating under a Home Rule Charter?
3. A state statute provided that X county should be created from the east half of Y county. The public buildings of Y county were located in the east half, and Y county was in debt for \$80,000. With respect to the buildings and debt, what is the result of this legislation,
 - (a) at common law?
 - (b) under the statutes of Illinois?
4. Discuss the constitutionality of a statute in Illinois that provides for the payment of fees of jurors of the municipal court from the treasury of the county in which the municipality is located.
5. Discuss the legal basis of validity of zoning ordinances.
6. A statute provided that no action should be taken by a city for the expenditure of money without a ye and nay vote. Without such a vote, a city purchased materials which it used for repairing its streets. A taxpayer's suit was filed to restrain the city from paying for this material. Assuming all other statutory requirements had been complied with in making the purchase, should the injunction be granted?

FINAL EXAMINATION IN MUNICIPAL CORPORATIONS (Law 24)

Second Semester 1945-1946

Professor Weisiger

1. A state statute provided that "Whenever any real or personal property shall be destroyed or injured in consequence of any mob or riot, the city, or if not in a city, then the county in which such property was destroyed, shall be liable to an action in behalf of the party whose property was thus destroyed or injured for three-fourths of the damages sustained by reason thereof." The statute also provided that no recovery could be had if the loss was the result of the neglect or wrongful act of the plaintiff, nor unless he had used all reasonable diligence to prevent his loss.

X sued a city in which a mob had destroyed a quantity of his cement for three-fourths of its value. It was admitted that, at the time of the destruction of X's property, the city was far beyond its constitutional debt limit and that the city had no funds to employ extra policemen to protect X's property. Is X's claim valid?

2. A city ordinance provided for licensing homes for dependent persons. It also made requirements as to ventilation, sanitation and isolation to prevent communicable disease. The ordinance provided that no such home shall be operated in any block in which two thirds of the buildings fronting on both sides of the street on which the home faces are devoted exclusively to residence purposes unless the owners of a majority of the frontage in the block and on the opposite side of the street give their written consent.

X, a non-profit corporation, had been operating a home for 25 dependent men between the ages of 65 and 78 in a building that was once a residence. None of the men were sick or helpless, and all received old age pensions which were turned over to X, which supplied them with food, clothing and other necessities. All the other buildings in the block were either one- or two-family dwellings. Can X enjoin the enforcement of the ordinance?

3. City X owned a building occupied by the fire department. On the second floor a room was equipped as a polling place for use in city elections. County Y, in which X was located, rented the room from X for 100.00 to use in a county election. As A was leaving the building after casting her vote at the county election, she caught the heel of her shoe on a nail protruding from a step in the poorly lighted stairway and suffered serious bodily harm. Is X liable to A? Is Y?

4. A village was incorporated under a general law providing for organization by majority vote of the electors residing in the territory to be incorporated. After acquiring a large indebtedness, the village board at the election voted for dissolution of the corporation. The board, after paying what debts it could with the funds on hand, ceased to act as village officers. On what would you base your advice to a creditor of the village if:

- (1) the statute made no provision for the dissolution of villages?
- (2) the statute provided for dissolution of villages by majority vote without any provision as to existing debts?
- (3) the dissolution was under the Illinois statute?

5. A city council voted to award a contract to the X Company to install parking meters on a certain street. A statute of the state required all resolutions for the expenditure of money by a city to be passed by a yeas and nays vote and recorded in the journal. The statute also provided that all contracts of cities in amounts exceeding \$500.00 should be let to the lowest responsible bidder. Neither of these provisions was observed by the city. X installed the meters according to the terms made with the city, and the council then voted, recording the yeas and nays, to pay the amount agreed upon.

A taxpayer of the city filed a bill to enjoin the payment to X. What are X's rights in this matter?

6. A state statute made gambling with slot machines illegal. A city, operating under a Home Rule Charter, by ordinance licensed installation of five-cent slot machines in the city. The machine paid tokens which were not redeemable in cash or merchandise and could be used only in playing the machines for more tokens. Is the ordinance valid?

OIL AND GAS

(LAW 52)

FINAL EXAMINATION IN OIL AND GAS (Law 52)

Second Semester 1945-1946

Professor Summers

1. (a) A is the owner of Blackacre. B is the owner of Whiteacre, an adjoining tract, which he has leased to the D Oil Company for oil and gas. Between the two tracts there is a strip of five acres claimed by both A and B. B's lease to the D Oil Company includes the disputed strip. D Oil Company has drilled several producing wells on the undisputed portion of its lease and there are numerous producing wells in the neighborhood, but no wells have been drilled on A's land or on the 5-acre tract. Pending a suit between A and B to settle the title of the disputed strip, D Oil Company enters thereon and drills a producing well. Later, a judgment is rendered by the court of last resort in the state, declaring the title to the disputed strip to be in A. What legal and equitable remedies are available to A in an action against the D Oil Company? If A seeks damages, what will be the measure thereof?

(b) Suppose the well drilled by D Oil Company on the 5-acre tract had been wholly unproductive of oil or gas. What remedies are available to A against D Oil Company? If A seeks damages, what will be the measure thereof?

2. (a) Suppose that A, the owner or oil and gas lessee of Blackacre, drills six wells 100 feet apart and within 25 feet of the boundary between his land and Whiteacre, owned by B. Suppose further that upon the completion of these wells, all of which produce gas, A lets them flow openly with the hope that they will eventually produce oil. Upon what theory or theories did the Pennsylvania, Ohio and Indiana courts in the absence of statutes hold that B had no legal or equitable remedy against A, even though they conceded that much of the gas produced from the wells came from B's land?

(b) Suppose that in the state where A's land is located, there had been an oil and gas conservation statute defining and prohibiting the waste of oil and gas and authorizing an administrative agency of the state to issue and enforce rules and regulations for the prevention of waste as defined; that in the exercise of its authority the administrative agency had issued rules and regulations prohibiting the open flow of wells, including the blowing of gas into the air, and prohibiting the drilling of any well nearer than 400 feet to any other well or nearer than 200 feet to any boundary line between separate ownerships of land. And suppose further that A had brought suit against the administrative agency to enjoin the enforcement of those regulations as against him, on the ground that the effect of such enforcement is to deprive him of property without due process and just compensation. On what theory or theories have the courts upheld the validity of such statutes and regulations?

3. In 1880, A, the owner in fee simple of a tract of land in Illinois, conveyed the land by warranty deed to B, but the deed contained the following clause:

"The grantor excepts from this conveyance all of the coal and other minerals in and under the above described land."

At the time of this conveyance no oil or gas was being produced within 200 miles of the land. Coal was being produced from adjacent lands. P, the present owner of the land, traces his title through various conveyances to B. D, claiming title to the minerals under the land, traces his title thereto to A. No attempt was ever made to mine or produce any minerals from the land by the surface owners or the mineral owners until 1945, when D commenced the drilling of an oil well. P brought suit to enjoin him. What should the court hold? Why?

4. A leased a tract of land to B for oil and gas. The lease was dated May 1, 1945. It contained an unless drilling and rental clause. The habendum clause provided that the lease should be for a term of one year and as long thereafter as oil or gas is produced from the land by the lessee or his assign in paying quantities. On March 15, 1946, B commenced the drilling of a well which he did not complete until May 5, 1946. Upon completion the well had an initial production of 200 barrels per day. On May 10 A commenced a suit against B to cancel the lease on the ground that it had terminated May 1, 1946.

B's attorneys are basing their defense upon the following:

(1) If the court decrees a cancellation of the lease, it will amount to the enforcement of a forfeiture which an equity court shall avoid if possible.

(2) B has substantially performed his obligation to produce oil within the definite term of the lease and the lease should remain in force so long as B produces oil in paying quantities.

(3) The drilling clause and the habendum clause are inconsistent, since B has already paid for the privilege of drilling during the first and only year of the definite term of the lease, and the drilling clause should control so that B can continue production.

What are the merits of these defenses? If you had to decide this controversy, what decision would you make? Why? If you had been B's attorney when he took the lease, what changes would you have made in the habendum clause?

5. In 1930, A leased a tract of 160 acres to X Oil Company for oil and gas. The lease contained an unless drilling clause and provided for a term of five years and as long thereafter as oil and gas are produced from the land. In 1933 X Oil Company drilled a well on the S.W. 40 acres, which produced oil in paying quantities. It then drilled one more well on the S.W. 40 and two wells on the N.W. 40, all of which produced oil in paying quantities. The X Oil Company has failed to drill any wells upon the east 80 acres of the tract, although repeatedly requested to do so by A. Suppose A brings an action for damages against the X Oil Company for failure to develop the east 80 acres. What proof must he make before he can recover?

Suppose that the lease does not contain an express forfeiture clause and that A brings a suit to cancel the lease as to the east 80. Upon what theory or theories may the court cancel the lease as to the east 80?

6. (a) In 1940, O, the owner of a 160-acre tract of land, leased it for oil and gas to the S Oil Company. In 1941, before there had been any drilling on the land, O conveyed the south 80 acres of the land to R, subject to the existing lease. In 1941, the S Oil Company drilled a producing well on the north 80 acres of the leased land. Is R entitled to any share of the royalties from the production?

(b) In 1940, O, the owner of a 160-acre tract of land, leased it for oil and gas to the S Oil Company, the lease containing the following provision:

"If the leased premises shall hereafter be owned in severalty or in separate tracts, the premises nevertheless shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire leased acreage."

Before any drilling was done on the land, O, by mineral and royalty deed, conveyed to R an undivided one-half interest in the oil and gas in and under the southwest 40 acres of the tract, subject to the existing lease, together with an undivided one-half interest in the delay rentals and royalties which might accrue or become payable under the terms of the said lease as to the above described 40-acre tract. In 1941, S Oil Company drilled a producing oil well on the northeast quarter of the 160-acre tract. Is R entitled to any of the royalties payable from this production? Why?

Summer 1946

1. The courts in some states hold that the interest created in the lessee by the ordinary oil and gas lease is a defeasible fee in the oil and gas in place. The courts in other states hold that such a lease creates a non-possessory interest in the nature of a common law profit a prendre. State the reasoning upon which these two lines of authority are based and discuss their respective merits.
2. Practically all legislation for the conservation of oil and gas has been held valid as against claims of unconstitutionality on the basis of the principles stated by Chief Justice White in Ohio Oil Company v. Indiana, relative to the legal relations of landowners with each other and with the state respecting oil and gas under their lands. State these principles and explain their application in support of the validity of a statute defining and prohibiting waste of oil and authorizing the conservation commission of the state to limit the production of oil from fields in the state and prorate the daily allowable on a reasonable basis among the lessees and landowners in the field.
3. A leased land for oil and gas purposes to B June 1, 1941. The habendum clause of the lease provided as follows: "This lease shall continue in force for a term of 5 years and as long thereafter as oil or gas is produced from the land by the lessee or his assigns in paying quantities." The lease employed an unless drilling and rental clause with rental periods of one year, payable to the lessor or to X Bank to the credit of the lessor.
 - (a) Suppose B did not commence a well on the land within the first year and did not pay the delay rental on or before June 1, 1942. Is the lease still alive? Why?
 - (1) Suppose B tendered A a fat steer in payment of the rental and A accepted and gave a receipt for the rent. Is the lease still valid? Why?
 - (2) Suppose B paid the rental to the X Bank on June 1, 1942, with instructions to credit the amount to the account of A, but A's account was not so credited until a week later. Is the lease still valid? Why?
 - (b) Suppose B paid the delay rental as required by the terms of the lease on June 1, 1942, 1943, 1944 and 1945, and then commenced the drilling of a well on May 1, 1946, but did not complete it and actually produce oil therefrom until June 10, 1946. A now brings suit to cancel the lease on the ground that it expired June 1, 1946. Should A recover? Why?
 - (1) What different result might be reached if the suit were in West Virginia or Oklahoma? Why?
 - (2) What change in the wording of the habendum clause would lead to a different result?
4. May 1, 1932, A leased a tract of 160 acres to B for oil and gas for a term of 5 years and as long thereafter as oil and gas are produced in paying quantities. In 1933 B drilled 4 wells on the south 80 of the lease, all of which produced oil and gas in paying quantities, but has never drilled a well on the north 80, although repeatedly requested by A to do so. A feels, and perhaps rightly so, that B has breached some covenant of the lease. A seeks your advice as to his remedies against B. The lease does not contain a general forfeiture clause. Explain to A what covenants of the lease B may have breached, the evidence necessary or which may be taken into consideration by the court or jury in establishing the breach, and A's choice of remedies together with the theories upon which they are based.

PERSONS

(LAW 7)

FINAL EXAMINATION IN PERSONS (LAW s7)

Summer 1945

Professor Weisiger

1. A, without justification, deserted B, her husband, on July 1, 1943. On July 15, 1944, A sent a letter by mail to B offering to return as his wife. The letter was lost in the mail and was not delivered to B until August 4, 1944. On August 5 B sued for divorce on the ground of desertion. Discuss.

2. A, when 16 years of age, married B in a ceremonial marriage with his (A's) parents' consent. After living with B for 6 months, A informed her that he rescinded their marriage and the next week he married C without the consent of either of his parents after obtaining a license by perjury. Before reaching the age of 18, A told C their marriage was at an end. He then began living with B again, with whom he resided until 2 months after he reached the age of 18. Then he deserted B for the period of 1 year. What are the rights of B with respect to divorce? Of C?

3. A deserted his wife, B. A was not heard from for 8 years and B, believing he was dead, married C. A returned soon after the marriage to C. B sued A for desertion. Has A a defence?

4. A sued his wife for divorce on the ground of adultery. The defence was condonation. The court instructed the jury that the burden of proof was on the wife to prove A had sexual intercourse with her after knowledge of the alleged adultery. Was the instruction correct?

5. A locked his wife in a room for 2 hours to prevent her from going to a dance. She sued him for false imprisonment. Will the action lie?

FINAL EXAMINATION IN PERSONS (Law 7)

Second Semester 1945-1946

Professor Weisiger

1. A married W, the daughter of A's father's sister by the half blood. Is W entitled to share as a widow in A's property upon A's death?
2. F was 15 years old on June 2, 1945, on which day she was married to B, aged 18. The next day F's father, R, regarding the marriage as void, since it was entered into without his consent, persuaded F to abandon B and to live with her parents. B had procured the license for the marriage by representing his own age as 21 and F's as 18. During the next month B married W without the consent of the parents of either party. B then sued R for alienating F's affections, and R had B prosecuted for bigamy. Discuss both proceedings.
3. In 1890 B entered into a ceremonial marriage with F in reliance upon F's positive statement that D, her former husband, was dead. F knew her statement was false. In 1894 B made a will leaving all his property to F, his wife. In 1896 B learned for the first time that D was living in 1890 and had not died until 1892. B at once abandoned F and in 1900 F sued B for a divorce on the ground of desertion. Discuss.
4. By false and fraudulent statements, B induced his wife, F, to transfer some of her property to him. He then obtained a divorce from F on the ground of adultery. After the divorce was granted, F sued B in deceit. Discuss.
5. B tried to procure the adultery of his wife, F, with X, but failed. Two years later, without any attempts at procurement or acquiescence on B's part, F committed adultery with Y. After learning of this, B maintained marital relations with F for six months, and then F left B without notice as to where she was going. Not hearing from F for two months, B sued for a divorce and F filed a crossbill for divorce on the ground of cruelty. Assuming that acts of cruelty on B's part sufficient to satisfy the requirement of the divorce statute occurred just before F left B, how should the case be disposed of?

PLEADING

(LAW 20)

FINAL EXAMINATION IN PLEADING (LAW 20)

First Semester 1944-1945

Professor McCaskill

1. Assume a complaint in the circuit court of Champaign County, Illinois, by Parks against Drum containing in its body the following allegations only: "Plaintiff Parks says that defendant Drum is a trustee under the will of Henry Jones, and that plaintiff is a beneficiary under said trust; that defendant has been collecting rents and other funds as required by said trust, but has made no accounting thereof, and has not paid to plaintiff sums lawfully due him under said trust. Plaintiff prays that defendant be required to make an accounting of all sums received by him and to pay to plaintiff such sums as are found due upon said accounting, that defendant be discharged as trustee, and another trustee appointed in his stead." If a proper motion to dismiss (demurrer) were filed to this complaint, what would be the points which you think might be argued successfully against the complaint? Explain why.

2. Assume that to the complaint set out in Question 1, the defendant filed an answer denying any such trust as alleged, and denying any obligation to account to or to pay moneys to plaintiff, and that the case came on for trial on these pleadings; that on the trial plaintiff offered in evidence a trust deed proved to have been signed by Jones, creating a trust for the benefit of Parks, specifying the terms of the trust, the duties of the trustee, and the property upon which it operated; that defendant objected to this evidence on two grounds: (1) that the pleadings were insufficient to permit proof of any trust; and (2) that the evidence offered was at variance with that pleaded. As judge, what rulings would you make on each objection to the evidence, and why?

3. Assume a complaint and answer as in Question 2, filed several years ago, the case not having been tried; that after a lapse of time in which laches or the statute of limitations would bar a new suit, the plaintiff obtained leave of court to file an amended complaint, and that this amended complaint fully and completely described a deed of trust made by Jones in his lifetime, making plaintiff beneficiary and Drum a trustee to administer the trust, fully describing his duties; showed that Drum had acted as trustee, had collected moneys, had made no accounting or payments to plaintiff, and had abused his trust, and prayed for proper relief. Assume that defendant moved to dismiss (demurred to) the amended complaint on the ground that it set up a new cause of action barred by laches and the statute of limitations. What ruling should be made on this motion, and why?

4. The Civil Practice Act of Illinois became effective January 1, 1934. Had Parks' claim against Drum for failure to account as trustee arisen before that date, was there any way under former procedure by which Parks in a suit against Drum could have forced Drum in advance of trial to disclose evidence in his possession pertinent to the establishment of Parks' bill of complaint? Explain.

If such a suit were filed since the Civil Practice Act became effective, would the complaint be framed the same as formerly, and would the same methods be available for ascertaining evidence in possession of a defendant pertinent to the issues? Explain.

5. Sections 31(1) and 33(1) of the Illinois Civil Practice Act require a plaintiff to make a plain and concise statement of the facts constituting a cause of action, defense, counterclaim or reply. Discuss the meaning of this with reference to (1) pleading a transaction as a layman would see it; (2) pleading "the dry, naked facts," as they actually occurred; (3) pleading fictions; (4) pleading deductions from subsidiary facts; and (5) pleading conclusions. What, if any, distinctions are there between conclusions of fact and conclusions of law? The question makes no assumptions as to whether the particulars asked to be considered do or do not overlap. That is for the student to determine.

6. The complaint of Jay Pleader against John Drake in an Illinois court in 1945 alleges: "On May 5, 1944, plaintiff, Jay Pleader, was riding in an automobile being driven between Bondville and Seymour in a westerly direction on Illinois Highway No. 10 by defendant, John Drake, and that while rounding a curve in said highway the automobile was so driven by defendant that said automobile was overturned, and, as a result thereof, plaintiff's legs, arms and ribs were broken, he was internally injured, and became permanently crippled; that at the time plaintiff was either a passenger for hire of defendant, a non-social guest, or a social guest; that if a passenger for hire or a non-social guest, plaintiff was at all times exercising due care for his own safety; that the overturning of said car, as described, was due to one or other of the following acts of the defendant: the defendant either (1) so negligently and carelessly drove the car that it left the pavement and overturned as a result thereof; or (2) the defendant, with full knowledge that plaintiff was likely to be injured thereby, wilfully and wantonly drove said car around said curve at a high and dangerous speed, wilfully and wantonly failed to observe where he was driving, and failed to see a car approaching said curve from the opposite direction although the car was in plain view and liable to collide with defendant's car, and as a result was compelled to drive off the pavement into a ditch to avoid a collision with said car. Plaintiff demands \$5,000 damages."

Defendant has moved to dismiss the complaint on the following grounds: (1) because it does not state a cause of action, it being uncertain whether plaintiff was a social guest or whether defendant owed him any duty except not to wilfully injure him; it being uncertain whether, if a social guest or a passenger, plaintiff was in the exercise of due care; and because it does not negate that plaintiff was guilty of wilful and wanton conduct; (2) because plaintiff has not separately stated his causes of action founded on negligence and wilful and wanton conduct.

Decide the motion, discussing no points but those assigned. Sections of the Civil Practice Act involved are Secs. 33(2), 40(1), 42(2), 43(1) and (2), and Supreme Court Rule 12.

If you decide the motion in No. 6 against the complaint, explain how the plaintiff, who wishes to make alternative claims so as to avoid a variance and to have the advantage of the proof most favorable to him, may plead in an amended complaint to accomplish those wishes. If you decide against the motion and in favor of the complaint as drawn, draft an answer by defendant which will put in issue all the material allegations in the complaint.

8. Assume that Pleader in Question 6 alleged "plaintiff was riding in the car of defendant as a passenger," and then went on to charge negligent driving of the car by defendant, causing the accident, and assume that Drake moved to dismiss the complaint for not stating a cause of action, specifying as a reason that the allegation that plaintiff was a passenger was a legal conclusion, and insufficient to establish a relation upon which a recovery could be had for negligence. What ruling would you make, and why?
9. Assume that Pleader in Question 6 alleged that plaintiff was a passenger in Drake's car, and that Drake negligently ran it around a curve at a high rate of speed, causing it to overturn and injure plaintiff, and that plaintiff was exercising due care; that to this complaint Drake filed the following answer: "Defendant denies that he was guilty of the negligence charged in the complaint, and denies that plaintiff was exercising due care." Assume that on the trial the plaintiff offered no proof of how he came to be in Drake's car, but confined his proof to acts of his own care and defendant's negligence; that thereupon Drake attempted to testify that Pleader thumbed a ride, and asked Drake as a favor to carry him to Seymour, but that plaintiff objected to this testimony. What should the ruling be on the objection? Why?
10. Assume pleadings as in Question 9, and that while plaintiff was on the witness stand during the trial, being cross-examined by defendant, he was shown a paper by defendant's attorney and asked if it bore his signature, and he replied that it did; that when this paper was offered in evidence by defendant, being a release of plaintiff's claim, plaintiff's attorney objected to its being received in evidence. What should be the court's ruling? Why?

1. A complaint filed in the Circuit Court of Champaign County, Illinois, is entitled "John Peters, administrator of the Estate of William Peters, against Mercy Hospital." Its allegations in full are:

"John Peters, administrator of the estate of William Peters, says this is a complaint to recover Ten Thousand Dollars damages, or such sum thereunder as may be just, because, on November 5, 1945, a nurse in the Mercy Hospital gave William Peters an overcharge of electricity, causing his death. John Doe, attorney for plaintiff, office address 44 Main Street, Champaign, Illinois."

Give your opinion as to the sufficiency of this complaint under the Illinois Civil Practice Act. Whether you think it sufficient under that Act or not, state whether you think it should be a sufficient pleading under a proper statute, giving your reasons.

2. A complaint filed in the Circuit Court of Champaign County, Illinois, by Henry Post against the City of Champaign, Illinois, on January 2, 1945, alleged:

"That on December 4, 1944, the City of Champaign was in control of and supervising a public highway in said city known as University Avenue, and had caused the pavement in said street between Prairie and Elm Streets to be torn up for repairing said University Avenue, so that a deep hole three feet deep was left in said highway, and negligently failed to put any barricade around said hole or to light the same in any manner so that in the nighttime of said day the same could be seen or avoided by persons driving vehicles upon said highway; that in the nighttime of said day plaintiff, Henry Post, was driving his automobile west on said University Avenue, between Prairie and Elm Streets, with due care for his safety; that by reason of the darkness, and the negligent failure of said city to barricade or light said hole, plaintiff, exercising due care, was unable to see said hole, and thereby ran his automobile into the same, and thereby his automobile overturned, and plaintiff's leg and arm were thereby broken, his face was cut and disfigured by flying glass, and he was injured internally, to his damage, Five Thousand Dollars, for which he prays judgment."

The city answered denying any negligence. The case not yet having been tried, on January 10, 1946, plaintiff asked and obtained leave to amend the above complaint by adding an allegation that on February 2, 1945, plaintiff served on the city clerk of Champaign and also upon the city attorney a notice, stating the time and place of said accident, and giving the name and address of plaintiff and of his attending physician. To the amended complaint the city has filed an answer setting up the one-year statute of limitations applicable to suits against cities. Plaintiff has moved to strike this answer as presenting no defense. What ruling should be made, and why? Would your answer be the same if the amended complaint had changed the hole from University Avenue to Springfield Avenue, between Prairie and Elm Streets, the other allegations being the same?

3. Complaint in the Circuit Court of Champaign County, Illinois, by Gladys Doolittle against George Doolittle to obtain a divorce on the grounds of desertion. The complaint alleges that the plaintiff, Gladys Doolittle, then having the name Gladys Meek, "was lawfully married to the defendant, George Doolittle, April 1,

1940, in Battle Creek, Michigan, and thereafter lawfully cohabited with said defendant as his wife from said date until May 5, 1942, in Urbana, Illinois, on which last date said defendant wilfully deserted her." Defendant has moved to dismiss the complaint for failure to state a cause of action, in that the allegations "was lawfully married to the defendant in Battle Creek, Michigan," "lawfully cohabited with defendant as his wife," and "defendant wilfully deserted her" are legal conclusions and not such facts as should be pleaded, and, in the alternative, moves that plaintiff be required to make said allegations more definite and certain. Decide the motions, in your opinion stating what you understand to be sufficient "facts" for pleading purposes, and the objectives sought in requiring any particular kind of statements.

4. Complaint in Illinois by Georgia Pietsch against Horace Drum. The complaint alleges:

"That on July 4, 1945, plaintiff was driving an automobile south, approaching Illinois Highway Number 10, upon a paved county highway about five miles west of Champaign, Illinois, intending to turn west upon said Highway Number 10, and that at said time and place defendant was driving an automobile east upon said Highway Number 10, approaching said county highway intersection with Highway Number 10, and that said defendant, at said time and place, wilfully and wantonly drove his said automobile so that it collided with the automobile driven by the plaintiff with great force, and caused plaintiff's automobile to be overturned and to catch on fire, whereby plaintiff was greatly injured, divers bones in her body were broken, and she was caused to be burned by her burning automobile, to her great damage," etc.

Defendant has moved to dismiss the complaint for failure to state a cause of action in the following respects: (a) that the allegation "wilfully and wantonly drove" is a legal conclusion; (b) that plaintiff has not alleged that she was exercising due care for her own safety; and (c) that she has not alleged she was not herself guilty of wilful and wanton conduct. Decide defendant's motion, giving reasons.

5. Suppose that in Question 4, instead of moving to dismiss the complaint, defendant had filed an answer denying each allegation in the complaint, and upon the trial the court instructed the jury after all the evidence was in on both sides:

"If the jury finds from a preponderance of the evidence that at the time of the accident in question plaintiff was in the exercise of due care for her own safety, and that she was injured as a result of any negligence on the part of defendant, you shall find the defendant guilty, and assess the plaintiff such damages as you find from the preponderance of the evidence she sustained."

Would this have been a proper instruction? Give reasons.

6. In a complaint in Illinois by Plumb against Doster, plaintiff alleges:

"Defendant is indebted to plaintiff for work and labor performed by plaintiff upon a certain building being erected on a lot in Urbana, Illinois, owned by the defendant, between May 2, 1945, and August 4, 1945,



in the sum of \$850, said work being done at the request of defendant, and being lathing and plastering on said building."

Defendant has moved to dismiss this complaint on the ground it fails to state a cause of action because it alleges no promise, no consideration, and no breach of promise. Plaintiff contends the promise is one implied by law, or in fact, that it is fictitious, as well as the consideration, and that "a plain and concise statement of the facts constituting the cause of action," as required by sections 31 and 33 of the Civil Practice Act, precludes the use of fictions, as was done in the common counts of common law pleading; that the naked facts as they actually occurred are required under modern pleading. Decide the motion, giving reasons.

7. Abe Potts and Dan Kettle desire you to bring a suit for them to recover their respective damages sustained in a three-way automobile collision. Your investigation reveals these facts:

Abe Potts and Dan Kettle were riding in Potts' auto, Potts doing the driving. At a street intersection in Champaign the Potts car was struck by a car being driven by John Drake, which was attempting to cross the intersection. The Drake car had been struck by a car driven by Rudy York, and thrown in the path of the Potts car. The Potts car was completely demolished, but Potts was unhurt. Kettle had an arm and some ribs broken. Witnesses at the scene of the accident vary in their reports as to whether Drake or York entered the crossing first, and as to the speeds of their cars, so that it is uncertain whether Drake or York, or both, were to blame for their collision and throwing the Drake car into the Potts car. All agree that Potts had not yet entered the intersection, and that he was driving slowly and on his side of the street. Tell how you would frame a complaint for Potts and Kettle against Drake and York, if that is possible, indicating what allegations you would make and whether you would use one or more counts; if more than one, what you would allege in substance in each; if one count, what allegations in substance you would put in it. In other words, without drafting the complaint in full, give a condensed picture of it as you think it should be, which will show your pleading scheme. In formulating your scheme consider whether a verdict for one sum in favor of both plaintiffs against both defendants would stand. State reasons for adopting your scheme.

8. Is it always necessary for a defendant to plead payment in order to prove it? Explain your answer.

9. The Illinois Dram Shop Act gives members of a family deprived of support by any disability of the head of the family caused by gift or sale of intoxicating liquor to him by a third person actions against such third person for all damages sustained. It includes damages caused by injuries to or death of said head of the family caused by such intoxicating liquor. Such an action did not exist at common law. The Dram Shop Act does not provide the time within which an action under it shall be brought, nor does it fix any limit on the amount of recovery. Assuming Carl Pugh to have been killed by intoxication caused by liquor sold him by Frank Grog, would a complaint against Grog by the widow of Pugh have to show that it was brought within one year, or within any particular time, or would it be necessary for Grog to plead a limitation period upon bringing the action to avail himself of it? In explaining your answer, indicate how one is to determine what allegations the plaintiff must make and what allegations the defendant must make.

10. Poorman borrowed \$5,000 of Drinkwater and gave Drinkwater a deed to a farm owned by Poorman. At the same time, by a separate instrument in writing, Drinkwater promised to convey the farm back to Poorman if he paid the loan within three years with interest at 6% per annum. Within the three years Poorman has tendered Drinkwater the full amount of the loan with interest, but Drinkwater has refused to reconvey or accept the tender, claiming it was an absolute deed. Poorman desires to bring a suit requiring Drinkwater specifically to perform his agreement to reconvey, and also wishes to recover damages for loss of a profit he could have made on a sale had Drinkwater performed his agreement. He prefers, if possible, to have his damages for loss of the profit assessed by a jury. Is there any way in which he can accomplish this result as a matter of right? Explain fully.



PRIVATE CORPORATIONS

(LAW 19)

PRIVATE

FINAL EXAMINATION IN CORPORATIONS (Law 19)

First Semester 1945-1946

Professor Britton

All questions are to be answered under the laws of Illinois.

Avoid mere repetition of facts stated in the answer.

Most questions may be answered adequately in one page.

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I. (a) A, B, and C owned and operated a business under the name of the Security Finance Company. A, B, and C filed a complaint in the name of the Security Finance Company, a corporation, against M for a balance due from M on an assignment of certain accounts receivable by A, B, and C to M. A, the bookkeeper, produced the books of account and the original records of the transaction, and after qualifying as a witness, offered the books in evidence to prove the account. M objected to the introduction of the evidence upon the ground that there was no proof in the record that the plaintiff was a corporation. What ruling, and why?

(b) Suppose M sues A, B, and C, alleging that they are partners, doing business as the Security Finance Company, for fraud and misrepresentation in the sale of accounts receivable to M. In their answer, A, B, and C denied that they were partners and alleged that the accounts were sold to M by the Security Finance Company, a corporation. At the trial the defendant offered in evidence the Articles of Incorporation of the Security Finance Company, duly signed by the Secretary of State. The plaintiff objected to this introduction in evidence upon the ground that the defendant had not offered to prove that the Articles of Incorporation had been filed in the Office of the Recorder of Deeds. What ruling and why?

II. (a) You are advising A, B, and C, who are promoting a corporation. They will need to enter into various transactions prior to incorporation and they have asked you to draft a provision which will free A, B, and C from personal liability on the obligation, and which will bind the third party from the date of his signing, and will bind the corporation when the latter comes into existence. Draft a clause which will accomplish the described results.

(b) If promoters enter into obligations with third parties, without such precautions and are personally bound thereon, is there any affirmative action that may be taken by the corporation when organized, which will impose liability upon it? Discuss the theories involved.

(c) Is there any theory under which the promoters may be freed from their own liability if for any reason the corporation becomes bound on the obligation? Discuss.

III. With respect to the following propositions, state which ones are true, and which are not true, with such brief comment - a sentence or two - as will support your answer.

- (a) A subscription for shares of a corporation, to be formed is a contract with its promoters.
- (b) A subscription for shares of a corporation to be formed is a revocable offer to its promoters to contract.
- (c) A subscription for shares of a corporation is a revocable offer to the corporation when formed.
- (d) A subscription for shares of a corporation is an irrevocable offer to the corporation when formed.
- (e) A subscription for shares of a corporation is a contract between the subscribers for the benefit of the promoters and is enforceable by them.

IV. With respect to the following propositions, state which ones are true and which are not true, with such brief comment - a sentence or two - as will support your answer.

- (f) A subscription for shares of a corporation is a contract for the benefit of the corporation when formed, and enforceable by it.
- (g) A subscription for shares of a corporation lawfully may be made payable in installments.
- (h) A certificate of stock lawfully may be issued upon partial payment of the agreed consideration if the contract so provides.
- (i) A certificate of stock lawfully may be issued in payment of future services.
- (j) Where the promoters have agreed upon the valuation of property to be transferred in exchange for stock, the directors, upon the organization of the corporation, may repudiate the subscription without liability to the corporation if their judgment is that the promoters' valuation was fixed at too high a figure.

V. The Champaign Realty Company was a corporation "for the purpose of acting as a broker in the sale, leasing and mortgaging of land." At a regular meeting of the stockholders, a resolution was adopted directing the officers of the company "to buy a certain ten-acre tract of land within the city and to sub-divide and offer the same as city lots to the public, and generally directing the management to buy and sell land, improved or unimproved, within the cities of Champaign and Urbana."

A contract was entered into by the corporation with the owner to buy the ten-acre tract.

- (a) If the Realty Company repudiated its contract, would the seller be entitled to specific performance?
- (b) If the Company proceeded with performance of the contract of purchase would dissenting stockholders have a right to enjoin performance thereof?

VI. A, B, C, D, and E organized a corporation for the purpose of manufacturing electric sweepers and other electric appliances for the home. All were directors, and they were the only stockholders. E was president and general manager. None of the others were actively engaged in the running of the business. Much of the business was done by direct selling on conditional sales contracts to home owners. The corporation was inadequately capitalized for extensive sales on credit. Finance companies offered to buy the sales contracts at rates which were deemed too high by all the directors.

A, B, C, and D then organized a partnership for the purpose of buying the sales contracts of the corporation at rates less than any rate of discount procurable from any finance company. The partnership venture was successful and the returns in profits were substantial.

The corporation, though solvent, could pay no dividends. E claims that the profits of the partnership belong to the corporation and accordingly sued A, B, C, and D for an accounting. Should he recover? Discuss the theory of the suit.

VII. State whether the following propositions are true or not true, without further comment.

- (a) A director of an Illinois corporation must be a resident of Illinois.
- (b) A director of an Illinois corporation must be a stockholder in the company.
- (c) Valid action by a Board of Directors of an Illinois corporation can be taken only by a majority of such Board.
- (d) A majority of the stockholders at a meeting duly called for the purpose, may validly rescind an executory transaction theretofore entered into by the officers of the corporation with a third party, in pursuance to a resolution adopted by a majority of the Board of Directors.
- (e) Any director of a corporation may be removed from office by a majority vote of the stockholders prior to the expiration of his term of office.

VIII. The Southern Illinois Coal Company was organized with a capital stock of \$100,000, represented by 10,000 shares of \$10 par value. Eight thousand (8,000) shares were outstanding and the remaining 2,000 were held as unissued shares. The members of the Board of Directors and the Officers owned 3,000 shares. The company was in a failing condition. New capital was needed. No market for the unissued shares was likely to be found. A, B, and C, outsiders, were willing to loan the company \$20,000, secured by mortgage on the properties, if they were given control of the company.

The Board of Directors, in order to obtain the loan, offered to issue the remaining 2,000 shares to A, B, and C, and also to establish a voting trust for five (5) years with A, B, and C as trustees of the 3,000 shares owned by members of the Board and by the Officers of the corporation. By the terms of the Articles of Incorporation, stockholders had no preemptive rights. This transaction was consummated.

Three (3) years later, the company was adjudicated bankrupt on an involuntary petition filed by general creditors.

The Trustee in Bankruptcy sues A, B, and C for \$20,000, the par value of the stock which had been issued to them. Should he recover? Discuss the general theories suggested.

IX. A was the holder of one-third of the stock in the X Corporation. He was not a director nor an officer. The holders of the two-third interests had effectively kept A from having much voice in the company's affairs. A called at the office of the company one day and demanded to see the stock book, the Minute book of the Board of Directors' Meetings, and the books of account. The officers of the corporation refused. A told B, the president of the corporation, that he would stay in the office until B let him see the books. For several days A remained in the office. One day A saw the Minute Book of the Board of Directors, picked it up and started out of the office. B saw him, grabbed the book and threw A out of the office, using no more force than was necessary to put A out.

A sued B for assault and battery.

The X Corporation sued A for conversion of the book.

Demurrer to the complaint in each case.

What should the court do, and why?

X. The Illinois Corporation Act provides that a corporation organized thereunder, may sell its assets only upon a vote by the owners of two-thirds of the outstanding shares. The Act gives dissenting stockholders, who do not accept the terms of the sale, the right to sue the corporation for "the fair value" of their shares, and thus to obtain a judicial determination of their value.

The X Grocery Company owned all but 15% of the stock of the Y Corporation, which owned a fleet of 50 trucks which were used exclusively in hauling freight for the X Grocery Company. Its business was extraordinarily profitable because they were continually in service with an assured business. The Y Company had been organized by the X Grocery Company years before and a few friends of the organizers, the present minority stockholders, had been invited to come in. For a number of years the Y Company had been paying annual dividends of 50% of the par value of the stock. The X Grocery Company decided to take all the profits itself. Accordingly, 85% of the stock was voted at a legal meeting to sell the trucks of the Y Company, and to distribute the proceeds as a liquidating dividend. The trucks were offered at a public sale duly advertised. They were bought by the highest bidder - the X Grocery Company, for \$100,000 - a sum which represented the value of the trucks - as trucks. The holders of the 15% minority interests, sued X, claiming that the "fair value" of the trucks should be determined by capitalizing the earnings of the Y Corporation. If this were done, the value of the stock held by the minority, for purposes of liquidation, would be worth about \$200,000.

In the light of the statutory requirement that "fair value" be paid to the minority for this stock, what method of valuation - either of the two suggested, or of any other method - should the court adopt?

(We did not take up this question, except incidentally, but I would like to see what the class will do with it.)

PROPERTY I AND II

(LAW 3a and 3b)

FINAL EXAMINATION IN PROPERTY I (LAW 3a)

First Semester 1944-1945

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer on a new page. No answer should exceed two pages in length. In all answers particular attention should be given to any applicable statute of this state and to the rules of law followed in this state.

1. Shortly before his death, F took his daughter D into the garden of the farm upon which he resided. At this time he was very feeble, and could walk only a short distance. He realized that he had not long to live. After having arrived at the garden, F sat upon a box, and there pointed out to D certain spots in the garden and the adjacent portions of the farm where he had buried money. He said to her: "I give this money to you. It is yours. But if I should get well, and want some of it, would you let me have it?" And D replied: "Yes, papa; if you get well you can have all of it. I will give it back to you if you get well." F advised D not to attempt to remove the money immediately. Accordingly, D permitted it to remain where it was buried until after F's death. She then dug in the places indicated, and recovered \$7,885 in gold coin. A, the duly appointed executor of F's estate, brought an action against D to recover the sum indicated. What judgment?

2. On March 17, 1942, P leased in writing certain premises to B "for the duration of the war and until automobiles are again produced" at a rental of \$50 per month. D entered under the lease and paid all installments of rent as the same fell due. On November 25, 1942, P served written notice upon D stating that the lease would be terminated on December 31, 1942. D refused to give possession at the date indicated in the notice, and P thereupon brought an action in forcible entry and detainer. What judgment?

3. A lost a valuable watch in a public park. B found the watch, and later sold it to C for \$25. As the watch was in a seriously damaged condition at the time that C purchased it, he deposited it with D, a jeweler, for repairs. D made the necessary repairs, which were worth \$20. Thereafter, while the watch was still in the hands of D, and while D's repair bill was unpaid, A learned the facts above recited, and demanded the watch from D, who refused to give it up without payment of his bill. A asks you to advise him (a) whether he can recover the watch from D without payment of the repair bill? (b) whether he has a remedy against any other person?

4. (a) By a deed duly executed and delivered, A conveyed Blackacre "to B for his use and benefit, and at his death to his children who shall survive him." Describe exactly all interests in Blackacre arising as a result of this conveyance.

(b) By a quitclaim deed of the type commonly used in Illinois today, A conveyed Blackacre "to B for the sole use and benefit of C." Explain exactly the effect of this conveyance.

5. The Illinois Statutes provide as follows:

"Upon application of the owner of grain stored in a public warehouse ... the operator shall issue to the person entitled thereto a warehouse receipt therefor, ... which receipt shall bear date ... and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection ... and that it is deliverable upon the return of the receipt properly endorsed ..."

A operated an elevator for the storage of grain and was subject to the provisions of the above statute. B deposited in said elevator 1000 bushels of wheat, and received a receipt in the terms required by the statute. A became insolvent. At the time of his insolvency there was sufficient grain in the elevator to cover all outstanding receipts, but it was conceded that probably no part of the wheat originally deposited by B remained in the elevator. The assignee in insolvency of A contended that B had only the rights of an unsecured creditor. Is this contention correct?

6. A leased in writing certain premises to B for the term of three years, beginning January 1, 1940, at a monthly rental of \$150 payable in advance. This lease contained the usual covenant binding the lessee and his assigns to pay the rent reserved. On December 26, 1941, B executed a written instrument leasing the said premises to C for the term of one year, beginning on the date of the instrument. This lease reserved a rent of \$200 per month, payable to B, and contained a provision entitling B to re-enter upon default in payment of said rent. On July 1, 1942, B defaulted upon the installment of rent payable to A on that date. Was A entitled to recover said installment of rent from C? What other remedies were available to him in Illinois?

FINAL EXAMINATION IN PROPERTY II (LAW 3b)

First Semester 1944-1945

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. No answer should exceed two pages in length. In all answers particular attention should be given to any applicable statute of this state, and to the rules of law followed in this state.

1. T died in August of 1940, leaving a will duly executed wherein he devised his farm of Blackacre to D. At the time of T's death, there were forty acres of growing corn upon the farm. D took possession of the farm after the death of T, and in the fall of the year harvested and sold the corn crop. P, who was duly appointed as executor of T's will, brought an action of trover against D for conversion of the crop. What judgment?
 2. In 1929 A mortgaged an apartment building to D. In 1931, A purchased from P certain plumbing utensils, such as bathtubs, lavatories, sinks, etc., which were installed by P in the building mentioned. These articles were purchased from P under a conditional sale contract which stipulated that title thereto should remain in P until the purchase price should be fully paid. Later in the same year, A became bankrupt. D foreclosed the real estate mortgage upon the premises, and bought in the said premises at the foreclosure sale. P, not having been paid for the plumbing utensils, brought an action of replevin against D to recover the same. What judgment?
 3. P owned and operated the "Bluff Saloon." On August 18, 1891, P conveyed a lot adjoining the Bluff Saloon to W by a deed signed and sealed by P but not by W. This deed contained the following provision:
 "The premises hereby conveyed are not to be used for saloon or dram-shop purposes so long as the grantor owns the Bluff Saloon."
- On May 20, 1893, D purchased the said lot from W with full knowledge of the provision above set out. D opened a saloon on the said lot. P, who still owned the Bluff Saloon, brought suit to enjoin D from operating the saloon on his lot. What decree? Suppose that P had sold the Bluff Saloon to X, and that the latter had brought suit for the injunction. Could he have succeeded?
4. A owned lot 3 and B owned lot 4, said lots being adjoining lots. A and B entered into an "agreement" in writing, wherein B, in consideration of \$250 paid to him by A, did "agree" that a seven-foot strip of lot 4, lying along the common boundary, "shall be left vacant at all times hereafter and is to be used for no other purpose except for passage, and that no building of any kind is to be constructed on said seven feet of lot 4." The said writing was signed and sealed by B. It did not mention lot 3.

A sold his lot to P, who erected a three-story apartment building thereupon, said building being erected on the line between the

two lots, and having entrances opening upon the seven-foot strip. Thereafter B sold his lot to D, who constructed in the seven-foot strip a stairway leading to the basement of his building. A railing was erected to enclose this stairway. The stairway and railing occupied about half the width of the seven-foot strip for a distance of thirty feet along the length of P's building, obstructing the passage to that extent. P brought suit for an injunction to restrain D from maintaining the said stairway and railing. What decree?

5. Church Road was a highway running north and south on the top of a ridge which was parallel to the western shore of Lake Michigan. The land east of this ridge sloped to the Lake, and the land to the west of the ridge sloped to a low area known as Skokie Swamp. P owned a tract of six acres fronting on Church Road and lying on the eastern slope of the ridge. This tract was within the corporate limits of the Village of Gross Point. In seasons of heavy rainfall a vast body of water accumulated in Skokie Swamp. This water could not reach Lake Michigan directly, but drained into the Chicago River. In 1883 a circular stone and brick culvert four feet in diameter and one hundred feet in length was laid under Church Road, cutting the ridge and draining a considerable portion of Skokie Swamp into Lake Michigan. The east end of this culvert entered on P's land above described and extended about twenty feet into the same. From the end of the culvert the water flowed through an open ditch in P's land on its way to the Lake. In 1904 the Village of Gross Point proposed to remove the culvert above described and replace it with a new culvert six feet in diameter, to be laid five feet deeper than the existing culvert, and to extend the same distance into P's land as the old culvert. This new culvert, being larger and lower than the old culvert, would naturally drain a much larger quantity of water from the Swamp over and through P's land. P filed suit for an injunction to restrain the Village from making the proposed change. What decree?

6. P leased certain premises to D for the term of five years, at a stipulated rental. The lease contained a covenant to pay the rent reserved, and a provision that the leasehold interest should not be assigned without the written consent of the lessor. D assigned to X. P consented to this assignment in writing. After this assignment X paid the stipulated rent to P for a period of time, and then defaulted. P brought an action against D for the rent in arrears. Can he recover?

1. A delivered a horse to the New York Central Railroad in Indianapolis for shipment to Urbana and gave specific instructions that the shipment be made via the company's Peoria and Eastern line. A prepaid the \$20 freight charge. Disregarding these instructions the carrier shipped the horse to Mattoon over its St. Louis line and there delivered it to the Illinois Central Railroad for shipment to Champaign. When the horse reached Champaign, the Illinois Central, without notifying A of its arrival, delivered it to B, a livery stable keeper, for feeding and care. At the time the horse was expected to arrive in Urbana, A inquired at the railroad station in Urbana but the agent of the New York Central knew nothing about it. A also inquired at the Champaign station of the New York Central with like result. A then directed an inquiry to the New York Central in Indianapolis and after a delay of ten days was told the route by which the horse had been shipped. A then went to the Illinois Central in Champaign and demanded the horse. He was told that he could have it upon payment of an additional freight charge of \$7.50 for carrying the horse from Mattoon to Champaign and the payment of \$25 boarding charges.

(a) Can A recover the horse or its value without paying or tendering payment of the additional freight charge? Why?

(b) Can A recover the horse or its value without paying or tendering payment of the boarding charge? Why?

(c) Suppose that A had stolen the horse from C and C locates it in B's barn, proves his ownership and demands its delivery to him but refuses to pay B the boarding charges. Can C recover the horse or its value from B? Why?

(d) Still supposing that the horse was stolen by A from C and further supposing that B surrendered the horse to C, can the Illinois Central recover the value of the horse in a suit against B, if B pleads and proves that he surrendered the horse to C, the rightful owner? Why?

2. A purchased an automobile from B under a conditional sales contract whereby A paid \$500 in cash and agreed to pay the balance of the purchase price in monthly installments. Under this contract B retained title to the automobile but gave A possession. B reserved the right, however, to retake possession for default on A's part in making the installment payments. The contract further provided that A should not have authority to create a lien on the automobile for repairs. The sale was effected in X county, and the conditional sales contract was recorded in that county. A drove the automobile to Y county, where it was badly damaged as the result of a collision. The automobile was taken to G's garage for repairs by A. G was not told that A had possession of the car under a conditional sales contract. G repaired the car and his bill was \$250. A defaulted upon his payments and B sought to exercise his right to retake possession for breach of the contract but was told that the car was in G's garage. B demanded the car from G who refused to give up possession until his charges for repairs were paid. B now brings replevin to recover the car from G. Should he recover? Why?

3. In April 1940, A delivered a thoroughbred two-year-old mare colt to T for training and boarding. A month later, as a result of T's negligence, the mare suffered an injury which made her unfit for racing. A brought suit and recovered a judgment for the value of the mare prior to her injury but this judgment was never paid. Shortly after the injury to the mare, T tried to deliver her to A and collect charges for his services in boarding and training her but A refused to accept delivery or pay the charges, saying to T: "The mare is worthless to me and I do not care what

you do with her." T bred the mare to a famous racing stallion and she foaled a colt which, as a three-year-old, won three historic derby races. Two other colts of the mare, foaled in 1942 and 1943, show great promise as racers. In September, 1945, A brought an action to replevin the mare and the three colts. The applicable statute of limitations is five years. Should A recover? Why?

4 (a) A conveys land by deed "to B for life and remainder to his heirs." What estates are created in B and B's heirs at common law? Why? In Illinois? Why?

(b) A conveys land by deed "to B for life and upon his death to the heirs of C." What estates are created in B and in C's heirs at common law? Why? In Illinois? Why?

(c) A conveys land by deed "to B for life and remainder to the heirs of his body." What estates were created in B and the heirs of his body in England prior to the year 1285? Why? In England after 1285? Why? In Illinois today? Why? What effect did Taltarum's Case have on estates created by this form of conveyance?

(d) A conveys land by deed "to B." What estate is created in B at common law? Why? In Illinois? Why?

(e) A conveys land by deed "to my son B and his heirs upon condition that he cuts the timber and prepares the land for cultivation within five years." What estate or estates are created in B and his heirs at common law? In Illinois? Why? Does A have any interest in the land after this conveyance? If so, what is it?

(f) A conveys land "to B and his heirs, but if he die without issue surviving him, to C and his heirs." What estates or interests would this conveyance have created in B and C and their heirs if it had been made in England in the year 1500? Why? In England in 1600? Why? In Illinois today? Why? If B should die without issue surviving him, would his widow take dower in Illinois?

5. When A, a resident of Illinois, died in 1945 he owned two 80-acre tracts of land in Champaign county. A died intestate and left surviving him a wife and two children.

(a) What interest or interests may A's widow take in the two tracts? Why?

(b) Suppose A had made a will giving his widow 40 acres of the land in fee. What interest or interests may she take in the two 80-acre tracts? Why?

(c) Suppose A had owned a third 80-acre tract during the marriage but had conveyed it during his lifetime to B without his wife's signing or joining in the deed to B. What interest, if any, may A's widow take in this third 80 acres if A died testate? Why? If A died intestate? Why?

(d) Suppose that within three months after A's death intestate, P secured a judgment against A's widow and sold her interest in the first two 80-acre tracts at sheriff's sale. What estate or interest would the purchaser get? Why?

6. L, by an oral agreement, leased a dwelling house to T for a period of one year from September 1, 1944, to September 1, 1945, at a monthly rental of \$50, payable in advance. On September 1, 1945, T did not vacate the premises and mailed L a check for the September rent. L accepted this check without any qualification or reservation. T continued to live in the house until January 1, 1946. He paid the rent up to and including December. On December 3, 1945, the furnace in the house broke down and could not be used. T demanded at once that L repair it but L neglected to do so until December 23, 1945. T and his family suffered considerable hardship but continued to live in the house by using portable electric heaters. On January 1, 1946, one week after the furnace had been completely repaired, T moved out of the house without giving L any notice. L now brings an action against T to recover rent at \$50 per month from January 1 to September 1, 1946. Should L recover? Why?

Suppose that on January 10, 1946, L put a new tenant in possession of the premises under a year lease at a rental of \$50 per month. Would this have any effect upon the decision in L's action against T? Why?

Suppose T had not vacated the premises. Would he have a cause of action against L? Why?

1. By an oral agreement L leased his farm in Illinois to T for a term of five years beginning March 1, 1941. T went into possession on March 1, 1941, and shortly thereafter built a brooder house for chickens on the land. This house is 20 by 10 feet and is set on a foundation of concrete blocks. L offered no objection to the building of the house and there was no agreement between L and T respecting it. In September 1944, T sowed a 20-acre field on the farm in wheat, which would not produce a crop until the summer of 1945. On October 15, 1944, T conveyed the land to X, subject to the lease to T. On December 27, 1944, X gave T written notice to vacate the farm March 1, 1945. T moved from the farm on March 1, 1945. He attempted to remove the brooder house by loading it on a truck but was unable to do so because of the unsettled condition of the ground. After the ground had become settled a few weeks later, T returned to the farm to move the brooder house but was prevented from doing so by X. In June 1945, T went to the farm again for the purpose of harvesting the wheat crop which he had sowed in September of 1944, but was prevented from doing so by X. T now brings an action against X to recover the value of the brooder house and the wheat crop. An Illinois statute provides that no action shall be brought to enforce a lease of land for a term longer than one year unless the lease is in writing and signed by the parties. What should be the court's decision? Why?
2. (a) On January 1, 1941, L leased a 160-acre tract of farm land in Illinois to T for a term of ten years at a yearly cash rental of \$2,400. In January 1942, the State of Illinois instituted condemnation proceedings to take 40 acres of the land for public purposes. L and T were made parties to these proceedings. The jury found the value of the entire 160-acre tract to be \$200 per acre and the value of the 40-acre tract taken by condemnation proceedings to be \$200 per acre. Should the court award to T any portion of the value of the land taken? If so, how is this amount determined? Must T continue to pay rent on the land taken by the State?
- (b) By written agreement L leased a dwelling house to T for a term of two years, commencing January 1, 1946. When the above lease was executed in November 1945, the house was occupied by X, under a lease for a definite term ending December 31, 1945. The lease between L and T contained no express promise on the part of L to deliver possession of the premises to T on January 1, 1946. X tortiously held over and refused to vacate the premises. T comes to you for advice. What would you advise him to do? Why?
3. T died in 1935 and left a will by which he devised an 80-acre tract of land to his wife Martha for life with remainder in fee to the "first one of my three nephews that graduates from the law school of the University of Illinois." In 1945 Martha, the life tenant, leased the land for oil and gas and the lessee drilled producing oil wells on the land. T's three nephews are all attending the University of Illinois but none of them is enrolled in the law school. P, one of the nephews, brings a suit against Martha and the oil lessee to prevent further operations on the land and an accounting for royalties already paid to Martha. What judgment should the court give? Why?
4. In 1935 A owned a 160-acre tract of land in a semi-arid country. A stream flowed through the east 80. A had built and maintained a dam of the stream on the east 80 and by use of the water power created had generated electric current which he had supplied to a nearby town for light and power purposes. With the use of the electric power, A had also pumped water through pipes to a large tank on the west 80 for the purpose of irrigating that tract. Over a course of years prior to 1935, A had developed the west 80 into a valuable fruit farm. In January 1935, A conveyed the west 80 acres, the fruit farm, to B for \$30,000. This deed



contained no covenant on A's part to continue to pump water to the tank on the fruit farm for irrigation purposes. Realizing that his farm was valueless for the growing of fruit without irrigation, B induced A to enter into a separate agreement by which A agreed to pump water from the river to the tank on the fruit farm in sufficient quantities to irrigate it properly. This agreement further provided that it was to be binding upon the heirs, successors and assigns of both parties. For the furnishing of the water, B agreed to pay A \$25 per year. This agreement was recorded in the county records. In 1940 B sold the fruit farm to P. A continued to furnish water. In 1943 A conveyed the east 80, where the dam and power plant were located, to D, an electric power company. D enlarged the capacity of the hydro-electric plant to supply electric current to many other towns and refused to pump water to the tank on the fruit farm. P now brings suit against D, asking the court to require D to pump the water. What judgment should the court give? Why?

Suppose that D did pump the water but that P refused to pay the \$25 per year. Could D recover this sum in a suit against P? Why?

5. L leased a house to T for a term of five years from January 1, 1941, to December 31, 1945, at a rent of \$100 per month payable monthly in advance. T assigned the lease to B, effective January 1, 1942. B assigned the lease to C, effective January 1, 1943. C assigned the lease to D, effective January 1, 1944, for a period ending December 20, 1945. Under this last agreement D agreed to pay C a rent of \$125 per month. During 1942, while B was in possession of the premises, he failed to pay L the December rent for that year. During 1943, while C was in possession of the premises, he failed to pay L the December rent for that year. During the year of 1945, while D was in possession of the premises, he failed to pay C the rent due under his agreement with C for the months of October and November and C failed to pay L for the rent due L for the months of October, November and December.

- (a) Can L recover all of the unpaid rent from T? Why?
- (b) If L should elect to sue B, what amount can he recover? Why?
- (c) If L should sue C, what amount can he recover? Why?
- (d) If L should sue D, what amount can he recover? Why?
- (e) If L should sue T and recover, what remedies, if any would T have against B, C, and D? Why?
- (f) Suppose L had conveyed the land to R on December 20, 1945, would R be able to recover for the unpaid rents against T, B, C, or D? Why?

6. In 1935 the X Realty Company owned a 40-acre tract of land within the corporate limits of the City of Y. In that year the Realty Company subdivided the tract into blocks and lots, numbering them, laid out streets and alleys and improved them, built sewers and planted shade trees. It filed for record copies of this plat in both the city and county recording offices, which designated the tract as X Realty Company's First Addition to the City of Y. The Realty Company then prepared printed deed forms for use in the conveyance of lots to purchasers. This printed form contained the following provision:

"The grantee, for himself, his successors and assigns, covenants not to erect any structure on the lot or lots hereby conveyed except a two-story brick dwelling house and garage to be used in connection therewith, not to erect such buildings closer than fifty feet to the front property line of such lot or lots, and not use such buildings for the conduct of any business."

The X Realty Company sold all of the lots in the subdivision by January 1, 1940, and in making all conveyances used the above-mentioned printed form of deed. A purchased a lot in the subdivision in 1936 and built a home thereon which in all respects conformed to the restrictions imposed by the covenant in the deed. B purchased a lot in 1937 from the Realty Company and likewise built a home in conformity with the restrictions of the deed. In 1938, A conveyed his lot to P. In 1945, B conveyed his lot to D by a deed which did not contain the above-mentioned restrictions. All deeds mentioned were duly recorded. D is now remodeling the house purchased from B for use as a funeral home. P now brings suit against D to enjoin him from conducting a funeral home on the premises purchased from B. What should the court decide? Why?

7. A owned a tract of land, appurtenant to which there was a right of way over a private road on the plaintiff's land. A and the plaintiff both maintained suburban homes on their respective tracts. The private road was surfaced with crushed stone and maintained by plaintiff. Defendant owned a tract of land adjoining A's, on which he was desirous of building a home. A leased his home to defendant during the winter and spring months of 1945. During this same period plaintiff closed his house and spent the time in Florida. While occupying A's house, defendant hauled building materials over the private road on plaintiff's land to A's land and thence to his own land. This heavy hauling during spring weather greatly damaged plaintiff's private road. Upon his return from Florida, plaintiff brought an action for damages against defendant. Should he recover? Why?

Plaintiff also brought a suit against A perpetually to enjoin A from using the private road. Should plaintiff recover in this suit? Why?

Summer 1946

Professor Reno

1. A was the owner of a grain elevator on January 1st when B delivered 10,000 bushels of wheat to the elevator under an agreement to pay a storage charge of \$100 a month. The agreement stipulated that B was to have the right to demand at any time the return of 10,000 bushels of wheat out of this elevator or its market value at his option. Also on the same day C delivered 5,000 bushels of wheat to the elevator under an agreement to pay a storage charge of \$50 a month. The agreement stipulated that C was to have the right to demand at any time 5,000 bushels of wheat of equal quality or the market value at his option. At the time A had 5,000 bushels of his own wheat in the elevator. A mixed the wheat of B and C with his own wheat so as to make a common mass of 20,000 bushels. In February A sold 8,000 bushels of wheat from the elevator. On March 1st A sold the elevator to X and transferred possession of the elevator and wheat to X. On the following day a locomotive of the Pennsylvania Railway Company set fire to the elevator through negligence of the engineer destroying 6,000 bushels of wheat, thus leaving only 6,000 bushels in the elevator. B immediately demanded delivery of the 6,000 bushels remaining in the elevator and payment of the market value of 4,000 bushels. C has demanded the market value for 5,000 bushels. Discuss fully the following:

- (a) Who has title to the 6,000 bushels remaining in the elevator?
- (b) Can X refuse to deliver to B any portion of this 6,000 bushels until paid the \$200 storage charges?
- (c) Is X liable to B for the market value of any wheat?
- (d) Is X liable to C for the market value of any wheat?
- (e) Has B or C any rights against the Pennsylvania Railway Company?
- (f) Has X any rights against the Pennsylvania Railway Company?

2. A owned an auto truck which was damaged in a collision. He had the truck hauled to the X Garage where it was repaired, the bill for which totalled \$100. When A called for the truck, the X Garage refused to give him possession until he paid the \$100 repair bill. A and the X Garage then agreed that A was to have the use of the truck for one week in order to earn sufficient money to pay off this \$100 repair bill, but if the bill was not paid within the week, the truck was to be returned to the X Garage. During this week A borrowed \$200 from the H Finance Company, and executed a duly recorded chattel mortgage on the truck for that amount as security for the loan. This chattel mortgage contained a clause expressly stipulating that A was to keep the truck in repair at his own expense and was not to incur any lien for repairs. At the end of the week A returned the truck to the X Garage, not having paid the repair bill. At this time it was discovered that the rear axle was broken, so the X Garage replaced the axle at a cost of \$25. The X Garage notified A that it would retain possession of the truck until A paid the \$100 repair bill but that A could have credit of six months on the \$25 repair bill. Discuss fully the following questions:

- (a) The rights of the X Garage as against A.
- (b) The rights of the X Garage as against the chattel mortgage of the H Finance Company.

3. A purchased a small factory building for the purpose of conducting a job printing business. He partially financed the transaction by executing a real estate mortgage duly recorded on the land and building to the X Bank for \$10,000. Subsequently he purchased from B under a conditional sales contract a printing press, an air cooling plant, and a large office safe. The conditional sales contract was duly recorded among the chattel records. The printing press weighed a ton and was bolted to the floor with large bolts set in the concrete floor of the factory. The air cooling plant was installed in the basement upon a brick foundation and was attached to the hot air heating system, so that during the summer the air would be circulated through the pipes of the hot air heating system and into the air cooling plant where the air would be cooled. The office safe was set upon small wheels, but A had the wheels removed and the safe installed in a hole cut in the wall of the factory office. A hole was cut into the wall, and the safe was set into the hole, so that the door of the safe was flush with the office wall. In addition the wall was replastered around the safe so that the safe door appeared to be fastened to the wall. B supervised the installation of the printing press and the air cooling plant, but knew nothing concerning the installation of the office safe. Subsequently before B had been paid under his conditional sales contract, A sold the factory and appurtenances to C. C carefully inspected the premises, but at no time did A inform him of the fact that this conditional sales contract existed. C knew only of the \$10,000 mortgage to the X Bank and purchased the factory and lot subject to this mortgage. Discuss fully and separately the rights of C, the X Bank, and B in respect to (1) the printing press; (2) the air cooling plant, and (3) the office safe.

4. A was a cotton planter in Georgia who had raised 50 bales of cotton. He shipped these bales of cotton to a cotton broker in North Carolina for sale. Through the mistake of the railroad the cotton was delivered at the factory of the X Mill Company in North Carolina. Each bale had been marked clearly with the name of the shipper and also that of the consignee. At the same time 100 bales of cotton of the same quality and weight, the property of the X Mill Company, were also delivered at the factory. The factory superintendent was told of the markings upon these 50 bales, but he directed that they be made into cloth along with the 100 bales of their own cotton. The entire lot of 150 bales was made into cotton cloth, consisting of 750 bolts, all of equal quality and size. The cotton bales were worth \$10 each and the bolts of cloth were also worth \$10 each. These 750 bolts of cloth were sold to the B.V.D. Company of Baltimore, who purchased in good faith, where 500 bolts have been manufactured into union suits worth \$10,000. Discuss the following questions:

- (a) What were the rights of A in the 750 bolts at the time of the sale to the B.V.D. Company?
- (b) What are the rights of A in the 250 bolts and the \$10,000 worth of union suits now in the possession of the B.V.D. Company?
- (c) Suppose that A sues the B.V.D. Company in trover, after a demand and refusal, what will the measure of damages be?

5. A, B, and C owned adjoining lots of land in the city with B's lot in the center joined by A's lot on the left and by C's lot on the right. The land sloped downward from C's lot so that surface water drained from C's lot across B's lot and onto A's lot. C had constructed a four-story building on the front of his lot so that the left wall was built up to the boundary line between his and B's lot. Likewise A had built a one-story frame building on his lot but with the right wall set back about three feet from B's boundary line. B's lot was vacant. Surface water from the rear of C's lot drained across B's lot and onto the rear of A's lot where it was collected in a small fish pond. B commenced the construction of a proposed ten-story office building upon his lot to cover the entire lot. He notified both A and C of this fact and offered them use of his land in shoring up their buildings. However, neither accepted this offer. B then began excavating for the basement, digging up to the boundary lines on both sides. When the excavation was completed, B suspended work because of financial difficulties for six months. In the meantime heavy rains caused water to collect in the excavation, and as a result part of the soil supporting the left wall of C's building was washed away, causing the wall to settle several inches, greatly damaging the interior of the building. Also soil supporting A's building was washed into the excavation so that the entire right side of his building crashed to the ground. Engineers found that the soil underlying C's building was such that it would not have been washed away but for the weight of the building, but found that soil underlying A's building was very porous and would have washed away without the weight of the building. Subsequently B completed his building extending to the rear of his lot. This caused C's surface water to collect in pools at the rear of his lot. Likewise no surface water drained into A's fish pool, thus causing it to dry up. Discuss fully the rights of A against B and the rights of C against B.

Summer Semester 1946

Professor Reno

FIRST PART

I.

A died in 1925 leaving a will in which he devised Blackacre to B for life with remainder to C. In 1927 C, married to X, conveyed to D, but X failed to join in the deed. In 1928 B died. In 1930 D died leaving a will in which he devised Blackacre as follows: "To E and F as joint tenants, but if E shall ever cease to be a Roman Catholic, then his interest shall pass to and vest in F." E died in 1933, still a member of the Roman Catholic Church, leaving a child G as his sole heir-at-law. In 1934 F, joined by his wife W, conveyed "all my right, title and interest to F and W, husband and wife." In 1935 H, a creditor of F, obtained a judgment against F, and at the execution sale purchased the interest of F in this tract of land. In 1936 F died leaving his wife W surviving as his sole heir-at-law. Discuss the interests of X, G, H and W in this land.

II.

A leased to B a house and lot upon March 1, 1938, for a term of two years at an annual rent of \$600 payable monthly in advance. The lease contained two provisions:

(1) "If at any time the lessor shall give written notice to the lessee of his desire to terminate the lease, this lease shall become null and void upon the expiration of thirty days after receipt of such notice."

(2) "If the lessee shall fail to pay any monthly installment of rent on or before the 15th day of the month for which it is payable, this lease shall become null and void."

B took possession of the premises and paid the monthly installments of rent on or before the 15th of each month until March 1940. Prior to March 1, 1940, there was no conversation or communication between A and B relative to the renewal of this lease. However, B without any consent or authority from A remained in possession of the premises until March 25, 1940, when he vacated. He did not make any payment of rent for March 1940 on or before the 15th, so on the 16th A notified B that he was liable for the monthly installment of rent due on March 15th, and further that he would hold B liable for rent until March 1, 1941. After B vacated the premises on March 25th, A refused to take possession, and left the premises vacant until March 1, 1941, when he commenced suit for rent of \$600 plus interest. Discuss the possible defenses that B's attorney might present to escape liability for this rent, and render judgment on them.

III.

Brown died in 1920 leaving a will in which he devised a tract of land "to Henry for life, but without power to convey his said interest to any person other than a relative of myself whose surname is Brown, and at Henry's death to his sister Mary and the heirs of her body. These gifts are upon condition that no saloon shall ever be maintained on the premises, and if a saloon shall ever be maintained upon the premises my heirs shall have an immediate right to re-enter." In 1930 Henry opened a saloon upon the premises. In 1935 Henry sold his interest to A who was not a relative of the testator. Since that date no saloon has been maintained on the premises. In 1936 Mary died unmarried and without children but leaving her brother Henry as her sole heir. In 1939 A died. Discuss fully the present rights of Brown's heirs, Henry, and A's administrator.

Second Part

IV. A owned a tract of land which he subdivided into ten lots numbered from 1 to 10. He duly executed and recorded a plot to this subdivision, setting off the size and numbers of each lot. However, the plot contained no building restrictions. He then advertised these lots for sale as being located in a subdivision expressly restricted to single family dwellings. In 1931 he sold lot 2 to B. The deed contained a provision restricting the use of the lot to single family dwelling houses only. In 1932 he sold lot 5 to C and the deed contained an identical provision. In 1935 he sold lot 9 to D with the same restrictive provision in the deed. Subsequently all of the remaining lots except lot 10 were sold with the same restrictive provisions. All of the purchasers except C built single family dwelling houses on their lots pursuant to the restrictive provisions in their deeds. In 1938 C sold the west half of lot 5 to X and the east half to W. X proceeded to build a single family dwelling house on the west half of lot 5. In 1939 A sold the remaining lot 10 to E without any restrictions in the deed. E then commenced the construction of an apartment house on lot 10. At the same time W began the construction of a filling station on the east half of lot 5. B, D and X have protested to E and W.

(a) Discuss the right of the plaintiff to recover in an action at law for damages for breach of covenant in the following situations:

- (1) B vs. W
- (2) D vs. W

- (3) X vs. W
- (4) D vs. E

(b) Discuss the right of the complainant to injunctive relief in the following situations:

- (1) B vs. W
- (2) D vs. W

- (3) X vs. W
- (4) D vs. E

V. A owned a lot facing on the north side of a street with a side street running along the east side of the lot. He constructed a single building containing two stores facing the east and west street. The rear 20 feet of the lot was vacant and each store had a rear door opening onto this vacant area. In 1900 A sold the store on the west to B by a deed, the description of which carried the east boundary to the east edge of this brick wall between the stores. B opened up a grocery store in his building and began to use the vacant strip behind the two stores as a means of ingress and egress of vehicles bringing merchandise to the rear door of his building from the side street on the east. In 1921 B purchased the vacant lot to the west of his store adjoining a public alley. Immediately B graveled a private drive from the rear of his store across this vacant lot to the public alley and ceased to use the strip behind A's remaining store as a means of ingress and egress to the rear door of his store. In 1925 A sold his store to C, who immediately began the construction of an extension on the rear of his store that entirely included the twenty-foot area at the rear of his store. B was fully aware of this construction before it was commenced and said nothing to C at the time. In 1939 B sold his vacant lot on the west and commenced to tear down his store building including the single brick wall separating the two stores. He also ordered C to remove the extension covering the rear 20 feet of C's lot, claiming an easement for ingress and egress to the rear of his lot. B plans to construct a moving picture theater upon his lot with a rear exit for patrons over the twenty-foot strip to the side street on the east. B has also refused to permit C to attach his store building to the east wall of B's new theater building. Discuss fully the rights of B and C in the rear twenty feet of C's lot and this single brick wall separating the two stores.

PUBLIC UTILITIES

(LAW 60)

FINAL EXAMINATION IN PUBLIC UTILITIES (LAW 60)

Second Semester 1944-1945

Professor Sullivan

MAXIMUM TIME: Three Hours

1. John Barleycorn, being in an intoxicated condition but still able to walk, boarded a passenger train of Central Railway at Pleasantville. The train was composed entirely of coaches of the vestibule type. The railway had a rule which prohibited passengers from passing from car to car or from standing on the car platform while the train was in motion. Relying on the protection afforded by this rule, the brakemen did not keep the outside vestibule door closed. John Barleycorn walked out on the platform, and he was speedily returned to the interior of the coach by an employee of the carrier and was ordered to stay there. In the absence of the employee, John again walked out on the platform and fell off the train while it was moving at a rapid rate. Injured but not killed, John now sues the carrier for damages. What result? Why?

2. Jennie Careful waited on the corner of a downtown street intersection in the city of Paradise, Illinois. She had arrived at that corner on a bus of the Happy Valley Bus Co. and had a transfer to another bus of the same company. An ordinance of Paradise required all of the buses to stop within sixty feet of the corner to take on and discharge passengers. On the day in question, it was cold and it had been snowing. The streets were icy and covered with a thin coating of snow. Approaching the corner where Jennie waited, the bus driver stopped, because of cars in front of him, about 100 feet from the corner. Jennie walked rapidly to the place where the bus had stopped with the intention of boarding it. While so walking, she slipped and fell, causing severe injuries. She now sues the bus company for damages for the injury. The court directed a verdict for the bus company and Jennie appealed. What result? Why?

3 & 4. Discuss the scope of the protection given a public utility in a rate proceeding by the due process clause of the State and Federal constitutions in the following cases:

1. Peoples Gas Light and Coke Co. v. Slattery
2. Hope Natural Gas Co. v. Federal Power Commission

5. The X Company is engaged in distributing both gas and electricity in the city of AB, Illinois, under a single franchise which contains no limit in time. The supply of natural gas which was being furnished is depleted and the X Company does not wish to build the facilities necessary to produce artificial gas. The X Company files a petition with the Illinois Commerce Commission for permission to discontinue the gas service, but X Company intends to continue the electric service. There was no showing that the Company would not be allowed rates high enough to make the artificial gas business profitable. Should the permit be granted? Give reasons for your answer.

6. Seatrain, Inc., is a common carrier of goods by water. It has two lines, one from Belle Chasse, Louisiana, to Havana, Cuba, and the other from New York to Belle Chasse, Louisiana, via Havana, Cuba. The second of these lines competes with interstate carriers by rail. Seatrain runs vessels so constructed that railroad cars can be loaded in the vessels and unloaded onto tracks at the destination so that the individual items of freight need not be handled at the ports. The rail carriers objected to this form of competition and adopted the following regulation: "Cars of railway ownership must not be delivered to a steamship, ferry, or barge line for water transportation without permission of the owner filed with the Car Service Division (of American Railway Association)." Several railroads refused to give their consent to the transfer of their cars to Seatrain. Seatrain applied to the Interstate Commerce Commission for an order compelling the railroads to permit Seatrain to carry the cars of the railroads upon the payment of a fee for that service. I.C.C. granted the application and ordered the carriers to deliver their cars containing through shipments via Seatrain to that Company, for which Seatrain was ordered to pay \$1 per car per day.

Assume that the I.C.C. has statutory authority to compel interchange of cars with other railroads, to compel the establishment of through routes and to compel the railroads to establish through routes with water carriers.

Pennsylvania R.R. sues to enjoin the enforcement of the order of the I.C.C. What result? Why?

FINAL EXAMINATION IN PUBLIC UTILITIES

(Law 560)

Summer Semester 1946

PART II

Professor Sullivan

Time: 1 hour

3. The Leave Early and Walk Railroad operates a main railroad line from Metropolis to Johnson City, a distance of approximately 400 miles. Metropolis is a large manufacturing city and it is the shipping center for a large area. The L.E. and W. RR. operates a branch line from Junction City, which is about half way between the two termini of the road. Since Junction City is a division point on the main line, shops, equipment and crews are available at this station. After having operated a passenger train and two freight trains each way per day over this branch line for some years, the railroad found the operation unprofitable and discontinued these services, substituting one mixed passenger and freight train each way per day. This train had a schedule which required three times as long to run from Pineville to Junction City as the one^{on} which the passenger train had formerly operated. This mixed train left Junction City early in the morning and on its return trip it left Pineville in the afternoon. The schedule made no connections with main line trains. Passengers required almost 24 hours to reach Metropolis from Pineville, and livestock shipped from Pineville failed to reach the market in time for the sales on the morning following shipment, thereby causing losses to shippers.

Residents of Pineville who were shippers and users of the passenger service filed a complaint with the Utilities Commission alleging that this service was inadequate and praying that the former service be reinstated or, in the alternative, that the schedule of the mixed train be improved, that it leave Pineville in the morning in time to connect with main line passenger and freight trains which reach Metropolis and Johnson City before night.

What order should the Commission enter? Why?

4. A group of carriers of property by rail published a tariff which provided that grain or grain products shipped from north of the Ohio River to Nashville, Tennessee, would be charged the full local rate from the point of shipment to Nashville. These shipments may be stopped in Nashville for a period not exceeding six months. If within the six months period they are reshipped to destinations south and east of Nashville, such reshipments will be rebilled so that the shipments will carry the through rate and the shipper will not be required to pay the local rate from Nashville to the destination, but only the difference between the through rate and the rate already paid from the point of origin to Nashville.

This reshipping privilege was denied to Atlanta consignees by the same railroads which granted it to Nashville.

On complaint by Atlanta shippers to the Interstate Commerce Commission, what order should the I.C.C. enter? Why?

What bearing does the long and short haul clause have on the case?

5. Discuss the liability of a common carrier of passengers for injury of a passenger. (1 page).

Summer Semester 1946

Professor Sullivan

TIME: 1½ Hours

1. Section 10 of Chapter 111 2/3 of the Illinois Revised Statutes provides as follows:

"The term 'public utility', when used in this Act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees or receivers ... that now or hereafter:

"(a) May own, control, operate, or manage, within this State, directly or indirectly, for public use, any plant, equipment or property, used or to be used ... for the production, storage, transmission, sale, delivery or furnishing of ... electricity ...

"(b) May own or control any franchise, license, permit or right to engage in any such business."

Section 56 provides, in part:

"No public utility shall begin the construction of any new plant, equipment, property or facility ... unless and until it shall have obtained from the (Illinois Commerce) Commission a certificate that public convenience and necessity require such construction."

A group of farmers began the formation of a cooperative. The promoters solicited as members all of the farmers in a large area. Seven hundred fifty members were secured. The X Cooperative thus formed applied to the Rural Electrification Administration for funds to construct distribution lines. The Cooperative expects to purchase its electricity from the ABC Power Company. The statute creating the REA requires that the cooperative comply with all valid state laws. REA advanced funds to the cooperative which advertised for bids for the construction of the lines. The lines are to transmit power only to the members of the cooperative. The XYZ Power Company, which has lines serving the town of Gnow Bone in the center of the area which is to be served by the cooperative, files a bill in equity in the circuit court to enjoin the construction of the new lines. What result? Discuss fully.

2. The Diamond Electric Light and Power Company was incorporated in the State of Missouri for the purpose of generating and distributing electric energy. It received a certificate of convenience and necessity from the state commission, but the exact boundaries of the territory to be served were not set out. The Company then secured a franchise from the appropriate county officials to sell electricity in the two adjoining counties, Newton and Taney. It was given authority to maintain poles, wires, etc., upon and along the highways in these two counties. Service was furnished to all of the towns in Taney County, but the only service offered in Newton County was in the village of Jasper, which is near the boundary of Taney County. An enthusiastic employee of the Company went to the town of Emerald, in Newton County, and canvassed the town, promising that, if enough persons signed up for electricity, the service would be furnished. Fifty residents of Emerald signed the application for service. Shortly thereafter, the employee returned with an electrical wiring contractor who made contracts with the applicants to wire their homes and business buildings for electricity. After the buildings all were wired for the service, the Company refused to extend its lines to Emerald because the return from fifty subscribers would not pay the cost of transmission. The Utilities Commission on petition of the residents of Emerald ordered Diamond Company to furnish the service requested.

The Company now seeks to enjoin the enforcement of the order. What result? Why?

REMEDIES

(LAW 4a)

FINAL EXAMINATION IN REMEDIES (LAW s4a)

Summer 1945

Professor McCaskill

PART II. ESSAY

Give your answers conciseness, but reveal the factors influencing your decision.

1. In Illinois, D has covenanted with you to convey to you a described parcel of land by warranty deed upon payment of \$3,000. You have tendered him the money, and he has refused to convey, though he has title. May you maintain ejectment against him to obtain title and possession? If not ejectment, what proceeding?
2. Ejectment in Illinois by P against D for a dwelling house and lot. P shows in his complaint that D is in possession, but that P has title and right to possession from X, who derails title from the government. The answer filed by D admits possession, and alleges that X, from whom P derived title by deed, acquired his title from Y, the father of X and of D, by will; that when Y executed his will giving the house and lot to X, he required X to solemnly promise that after Y's death X would permit his sister, D, to continue to live in the house so long as she cared to, rent free, and that X so promised; that P purchased the house and lot from X knowing of X's promise given his father, and is equitably estopped to set out his right to possession. P has moved to strike D's answer on the ground it presents no defense to ejectment in Illinois. D contends it is a valid defense since the Civil Practice Act and the amendment of the Ejectment Act making the Civil Practice Act applicable to ejectment, except as otherwise provided. Decide the motion to strike, giving reasons.
3. P has brought replevin against D in Illinois to recover possession of a described Mexican hairless dog alleged to have been wrongfully taken by D from the premises of P. The sheriff to whom the replevin writ was issued has returned it with the notation that he cannot find the dog described in his county. P suspects the reason the sheriff cannot find it is that D is concealing it somewhere, and has witnesses to prove they have seen the dog in D's house. P's wife is childless, and dotes on this particular dog. D has offered to buy the dog, but P does not wish to sell at any price. What, if anything, may P do or have done to make D disclose or produce the dog?
4. Give your concept of the distinctions, if any, between remedies, actions and suits, and of the effect, if any, upon remedies of an abolition of the distinction between the actions, and between actions and suits, and the substitution of one form of civil action.

FINAL EXAMINATION IN REMEDIES (LAW 4a)

Second Semester 1945-1946

Professor McCaskill

PART II

1. In a state maintaining distinctions between trespass and case, P brought an action of trespass against a railroad corporation and alleged that the corporation, through one of its agents and servants, with force and arms and against the peace assaulted and beat, wounded and manhandled the plaintiff, a passenger on one of the company's trains. The company pleaded not guilty. On the trial the proof showed that P was a comely young lady, fashionably dressed and alluringly perfumed and rouged; that she was on a regular passenger train in a chair car with no other passengers in her part of the coach. Her ticket had been accepted and collected. The coach was close, and she attempted to raise her window. A brakeman who was passing through volunteered to assist. After raising the window, he became amorous, attempting to force his attentions on P. She resisted, but he embraced her and attempted to kiss her. In her struggle to escape him, she became bruised and disheveled. When she cried for help, the brakeman hastily disappeared. The railroad company moved to non-suit P on the ground that case, and not trespass, was her proper action upon the above facts. Decide the motion, giving reasons and citing facts of any cases you think pertinent.
2. P, an Urbana resident and collector of curios, while travelling in India some years ago, secured a small Buddha which had been in a temple in one of the mountain provinces, and which was very peculiarly carved. In January 1946, while P was absent from his residence, D, a Hindu student in the University, son of an Indian Rajah, knowing that P had the Buddha, bribed P's housemaid to get it and give it to him. As a museum piece it is worth \$10,000. The Hindu student has refused to surrender the Buddha. To him it is a sacred thing which must be returned to its temple regardless of how it got away. He is able to pay damages in any amount, and will do so rather than surrender the Buddha. May P recover the Buddha by an action of replevin under the present state of the law in Illinois? Give reasons for your answer, citing any pertinent authority you may know of. Has P any other available remedy by which he may obtain the Buddha? If so, name it.
3. D, knowing he has no title, has wrongfully disseized P of a vacant lot in Chicago, Illinois, and has erected thereon a dwelling house worth \$15,000. In an action of ejectment against D, P has obtained a judgment for possession. D has now requested the court to appoint appraisers to appraise separately the lot and the improvements, so that he may have the privilege of buying the lot at the appraised value to save his improvements, or force P to pay the value of the house. Should the court comply with D's request? Give reasons for your answer.
4. Explain your concept of any differences there may be between remedies and forms of action, so that, if there were to be legislation substituting one form of civil action for the old forms of action and equity suits, your discussion would show what, if anything, would happen to the remedies you have studied. Your discussion should show whether there were remedies and forms of action in equity, and wherein, if at all, classifications of principles relative to specific performance, injunctions, partitions, etc., in equity differed from forms of action. The discussion is expected to show your perspective upon the course as a whole, and its purposes, so far as you can see them.

SALES

(LAW 9)

FINAL EXAMINATION IN SALES (LAW 9)

Summer 1945

Professor Goble

(Be concise as well as complete.)

1. O rented his farm to T for the purpose of raising cotton. T was to own one-half of the crop; the other half was to go to O in lieu of rent. T raised, in all, 20 bales of cotton. T deposited all of the cotton in W's warehouse, and in exchange therefor took a negotiable warehouse receipt which made the cotton deliverable to T's order. T pledged the receipt to the A bank to secure a loan in an amount equal to the full value of the cotton. C, a judgment creditor of O, levied on the cotton in the possession of the warehouseman, and the entire lot of 20 bales was sold by the sheriff to X and the proceeds were turned over to the judgment creditor, C. What are the rights of O, T, the A bank and C with respect to the cotton?
2. B attended an auction at which all of the farm equipment and livestock of S was to be sold for cash. All of S's cattle, 50 head, were put up for sale as a herd. B was the highest bidder and the auctioneer announced that the herd was sold to B. An hour or so later the sheriff levied on the cattle as the property of S, based upon a judgment which C, theretofore, had obtained against S. Before the close of the day's sale, B tendered the purchase price of the cattle to S, which he accepted. Over the protest of the sheriff, B drove the cattle away. The sheriff sued B in trover for the value of the cattle. Should he recover?
3. B went to S's stove manufacturing plant for the purpose of buying three gas ranges. From a sample B picked out the type he desired and contracted to buy three of them at a price per unit agreed upon. S was to ship the ranges by a trucking company to B at his place of business. The ranges were properly crated and shipped as directed. In the process of unloading the ranges, the truck driver and his helper dropped one of the ranges, as a result of which this range was badly damaged. B was not present at the time of unloading. The ranges, still crated, were placed by the truck driver in B's storeroom. An agent of B signed a receipt acknowledging the delivery of the property. Three weeks later B uncrated the ranges and discovered the damage caused during the unloading. B also discovered that two cast-iron rods in another one of the three ranges had been cracked. The evidence showed that these cracks had been made some months before the sale. Two weeks after B's discovery of the damages to the ranges, S's salesman called on B. B told the salesman he would ship the two damaged ranges back to S, and that he would keep and pay for only the one undamaged range. The salesman said he would inform S of B's attitude. S refused to assent to B's proposal. S sued B for the price of all three of the ranges. B's pleading admitted liability for the price of one range, but denied liability for the other two. Should S recover?

4. B, attending an auction sale of the farm equipment and stock of S, bought 25 head of cattle which were put up for sale. B paid for the cattle by his check on the D bank. On the same day B took the cattle to the railway station, and in pursuance to a contract to sell, B shipped them to Swift & Co. at Chicago under a bill of lading to the order of B. B drew a draft on Swift & Co. for the purchase price, attached the draft to the bill of lading and discounted the draft at the X bank. The bill of lading was negotiated to the bank as security for the payment of the draft. On the following day the check given by B to S was dishonored on presentment to the D bank because of insufficient funds. S could not find B, but S learned from the railway company that the cattle had been shipped to Chicago. S was shown a copy of the bill of lading. S did not learn who then held the bill of lading. S went immediately to Chicago, and through the aid of the railway company's employees, discovered the car in which the cattle were being transported. After demand and refusal both by Swift & Co. and by the railway company, S brought an action of replevin, naming the railway company and Swift and Co. as defendants. Should S recover?
5. Ten hogs put up at S's auction sale were knocked down to B under an agreement by which S was to deliver the hogs to B's farm the following day. B gave his promissory note for the hogs. That night the hogs, while still in S's barn, were destroyed by a fire. S sues B on the note. Is B liable?
6. S had in his field two stacks of timothy hay of approximately equal size and quality. He showed the two stacks to B, and after some dickering agreed "to sell" him one stack at \$10 per ton. The quantity was unknown, but it was assumed that there were between 12 and 15 tons in each stack. There was no designation of the stack B was to take. B was to come and get the hay and the price was to be paid as soon as the hay was weighed. Before B came to remove the hay, S went bankrupt and his assignee takes possession of the hay. B sues the assignee in replevin. Decide the case.
7. S sold and delivered to B negotiable warehouse receipts for tobacco previously deposited in the warehouse by S. The receipts were indorsed by S in blank. B sold the warehouse receipts to C, indorsing them to "C or order." C sold to D by delivering the receipts to D without indorsement. D presented the receipts to the warehouse and demanded the goods. The warehouse refused to deliver the goods because the day before it had been notified by B that, in the sale from B to C, C had materially misrepresented his financial condition and had failed to pay for the tobacco. The warehouse notified D of these facts. D then sued the warehouse to recover the goods and also sued C to compel his indorsement. B intervenes. Dispose of the case.

8. B in Chicago ordered goods from S in St. Louis, f.o.b. St. Louis, under an agreement by which B was to pay for the goods in 60 days. There was nothing said about payment by draft with B/L attached. S shipped the goods, taking an order B/L to himself, which he indorsed in blank, attached a 60-day draft, and sent the papers to his agent, X, in Chicago. Upon presentation B refused to accept the draft, whereupon X, without authority, pledged the B/L to K to secure a personal loan. While the railroad still has the goods, S sues both K and the railroad, asking that the B/L be impounded, and that the railroad deliver the goods to S. B intervenes, claiming title to the goods under his contract with S; or, in the alternative, damages for breach of contract. Dispose of the case.

9. McNabb was a garage mechanic. He had a small shop where he repaired cars, but he did not sell them. Carter had McNabb repair his car, and then asked McNabb whether he could find a buyer for it. McNabb thought he could, and so Carter left his car with McNabb for the purpose of seeing what "offers" he could get for it. McNabb traded and delivered the car to Rowley for another car, and sold this car to Brown for cash. McNabb failed to account to Carter for the cash received and Carter sued Rowley in replevin.

(a) Result?

(b) Assuming that Carter can recover from Rowley, can Rowley maintain replevin against Brown for the car Rowley traded to McNabb?

10. P purchased at the counter of D's restaurant a dish of ice cream for immediate consumption. The cream contained a small piece of glass which P accidentally took into his mouth. The glass broke a tooth, and lacerated P's tongue. D did not know of the presence of the glass and had not prepared the ice cream but had purchased it from X, a reputable ice cream manufacturer. What are the rights of P?

FINAL EXAMINATION IN SALES (Law S-9)

Summer Session 1946

Professor Britton

I.

S set out ten acres of tomato plants on land owned by him. Shortly thereafter the B Canning Company entered into a contract with S, the terms of which were set forth in the following letter sent by the B Canning Company to S:

We will buy your 1945 crop of tomatoes now estimated at 3,000 bushels and planted on your 10 acre tract, at \$3.00 per bushel, we to advance to you \$3,000 upon your acceptance of this offer, the balance of the price to be paid to you when the last portion of the crop has been put into crates in your sheds, we to have title to the entire crop from the date of your acceptance. You are to ship all tomatoes in crates by the Illinois Central Railroad from the town of X (three miles from your farm).

Signed: B. CANNING COMPANY

S, by letter, accepted this offer. B paid S \$3,000 upon his acceptance. The total crop amounted to 3,500 bushels. Five hundred (500) bushels had been delivered to B by S prior to the occurrence of the following facts. S sold and delivered 500 bushels to X. S sold 500 bushels to Y who paid the price therefor. These tomatoes remained in S's sheds.

Straight bills of lading to B for 500 bushels had been issued by the I.C. R.R. for tomatoes then in the railroad company's freight shed. Five hundred (500) bushels were crated and located in S's sheds at his farm, marked with B's name. Five hundred (500) bushels were in crates in S's shed but unmarked. The remainder of the crop had been picked but had not been sorted or packed in crates.

M, a judgment creditor of S, levied on (a) the 500 crates of the tomatoes sold and delivered to X; (b) the 500 bushels sold to Y; (c) the 500 bushels at the I.C. freight shed; (d) the 500 bushels marked with B's name at S's sheds; (e) the 500 bushels in crates in B's sheds, and (f) the remainder of the crop which had not been sorted or crated.

What are the interests of S, B, X, Y, and M in these several lots of tomatoes?

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II.

B, in Chicago, on September 1, 1945, wired S in Los Angeles:

"In accordance with your current price list for Fall of 1945, please ship three car loads of Grade A Sunkist oranges to me at Chicago: first car to be shipped October 1, 1945; second car on November 1, 1945; third car, December 1, 1945, A.T. & S.F. Railway. Bill of lading with draft payable 10 days after sight, attached, and to be sent to the LaSalle National Bank."

S replied: "Shipments will go forward as ordered."

The first carload of oranges was delivered on October 3rd by the shipper to the Union Pacific Railroad Co. which issued a bill of lading to the order of the shipper calling for delivery at Chicago. The shipper attached to the bill of lading a sight draft on B for the purchase price, and, through a Los Angeles bank, forwarded the documents to the LaSalle National Bank.

On presentation B paid the draft. The bill of lading was delivered by the LaSalle National Bank to B. On B's inspection of the oranges he found that they had been damaged to the probable extent of 15% of their value as a result of the failure of the refrigeration machinery during transit. On inspection B decided to keep the oranges, but on the same day he attached the bank credit in the LaSalle National Bank in favor of S by a proceeding in the Circuit Court of Cook County and garnished this bank in aid of the attachment. At the trial the evidence showed damage to the oranges in transit to the extent of 15% of the invoice price.

On the above facts, on a trial before the Court, without a jury, what should the Court do and what should his opinion be on each issue that counsel for both parties should present?

III.

In compliance with a contract, S in Minneapolis shipped to B in Chicago, two carloads of potatoes. Each car contained 300 sacks of potatoes. The price was \$2.00 per sack. One car load of potatoes was shipped in N.P. car 90697. The other car load was shipped in N.P. car 92852. The shipments were made over the C.M. & St.P. R.R. Each car was shipped under

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a bill of lading to the order of S.

S drew two sight drafts on B, each for \$600.00 and attached one of the drafts to each of the bills of lading. Each bill was stamped "Inspection allowed". The bills and drafts were negotiated to the First National Bank of Minneapolis which bank discounted the drafts. The documents were sent by the discounting bank to the X Trust Company of Chicago.

B was notified by the carrier of the arrival of both cars. On inspection, B found some of the potatoes in car N.P. 92852 to be in poor condition. B telephoned S, and as a result, S reduced the price of this car to \$500.00. The X Trust Company was notified of this reduction and was directed to surrender this bill of lading upon payment of the reduced sum.

B paid \$500.00 to X, but did not then pay the draft for \$600.00 for the car of potatoes in car N.P. 90697. By mistake of the bank, the bill of lading for car N.P. 90697 was delivered to B. The bank surrendered to B the draft for \$600.00 which recited on its face that it covered the price of the potatoes in N.P. 92852. The railroad company delivered both car loads of potatoes to B, car N.P. 90697 upon B's surrender of the bill of lading therefor, and car N.P. 92852 upon B's showing to the freight agent the draft for the price of the potatoes in N.P. 92852 duly marked paid by the collecting bank. B made no further payments.

S sued the delivering carrier for the loss. Assuming a trial before the Court without a jury, and upon the foregoing facts, what should the Court do and what arguments of counsel should the court adopt and what arguments should the Court reject?

IV.

In compliance with a contract of sale, S shipped from Kingston, Jamaica to New York, notify B, the purchaser, a cargo of coffee of 3,000 tons, under a bill of lading to the order of S, with sight draft on the National City Bank of New York in pursuance to a letter of credit in favor of S, for the purchase price, C.I.F. New York, payment against documents on arrival of the vessel.

While the vessel was still two days from New York the documents were presented to the National City Bank which paid the draft and took the bill of lading. On arrival of the vessel B was notified. The bank delivered the bill of lading to B upon B's signing and delivering to the bank a Trust Receipt which provided that B might surrender the bill of

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lading, obtain possession of the coffee and store the same in B's own warehouse. The Trust Receipt forbade the sale of any of the coffee by B except upon a prior consent in writing by the National City Bank. The coffee and the proceeds arising from the sale thereof were to be held in trust for the National City Bank.

B procured possession of the coffee on his surrender of the bill of lading to the shipping company, and stored the same in his own warehouse. B was not a public warehouseman, but he prepared ten bearer warehouse receipts for the coffee, numbered respectively from 1 to 10, and pledged numbers 1 to 5 of these receipts with the Chase National Bank to secure a loan.

Subsequently B obtained surrender of receipts 1 to 5 upon his issuance to the Chase National Bank of a Trust Receipt which authorized B to sell the receipts or the coffee for cash only, the proceeds of the sale to be held by B in trust for the Chase National Bank and within two days after the sale to deliver the proceeds to such bank.

B then sold receipts numbered 6 and 7 to X for cash, receipts numbered 8 and 9 to Y in satisfaction of a past debt due from B to Y. B was then adjudicated bankrupt. B then held receipt No. 10, the proceeds of the sale of receipts Nos. 6 and 7. All of the coffee was still in his warehouse.

Divide this coffee between the National City Bank, the Chase National Bank and the Trustee in Bankruptcy, according to the common law rule in New York.

V.

The S Railway Equipment Company, a subsidiary of the X Car Company, designed a truck for railway passenger cars. All of the parts that entered into the truck were manufactured by companies other than the S Railway Equipment Company and other than the X Car Company - about ten companies in all. All of the assembly work was done by the X Car Company under a contract with the S Railway Equipment Company.

On completion of some of the trucks they were installed on railway cars and test runs made under the direction of engineers of the X Car Company. Minor difficulties with the truck were discovered and corrections, agreed upon by the engineers of the two companies concerned, were made. The S Railway Equipment Company then sold 500 sets of these car trucks to various railway companies.

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No difficulties were reported during the first month of operation of the trucks under regular road conditions. During the second month, one truck broke down on the A Railroad, causing substantial property damage to the car. Two weeks later, a truck on a car operated by the B Railroad broke down, causing property damage to the car and personal injuries to occupants of the car. Notices of the breakdowns were given promptly to the S Railway Equipment Company by the A and the B Railroad Companies.

You represent the S Railway Equipment Company. This company has told you to conduct any and all investigations which you think necessary, and has assured you that the X Car Company will cooperate. You are to prepare a memorandum to the company which will tell them what their risks of liability are and to whom, and you are to tell your client what it should do in order to reduce his risks to the minimum and from whom it may recover, if at all, for any damages it may have to pay out.

SECURITY I AND II

(LAW 21a and 21b)

FINAL EXAMINATION IN SECURITY I (LAW 21a)

First Semester 1944-1945

Professor: Holt

Give reasons for your conclusions. Give proper attention to statutes considered in the course when pertinent.

1. In 1930 D purchased Blackacre from V and gave in part payment a note for \$2000, due July 1, 1932, drawn to the order of "Myself," indorsed in blank by D and secured by a mortgage of Blackacre to V. Blackacre was at that time reasonably valued at \$5000. In 1931 D conveyed Blackacre to A subject to the mortgage and in March 1932 A conveyed the premises to B subject to the mortgage. July 1, 1932, D and V made an agreement in writing whereby in return for the payment of a year's interest in advance the time for payment of the note was extended one year to July 1, 1933. On July 1, 1932, Blackacre was reasonably valued at \$1200. October 1, 1932, B conveyed Blackacre to C subject to the mortgage. The mortgage debt was not paid on July 1, 1933. What are V's remedies?

2. Action was brought by the indorsee of a promissory note against the maker. Property belonging to the maker was attached. While the action was pending, an involuntary petition in bankruptcy was filed against the maker. The indorsee joined in the petition. The maker received a discharge in bankruptcy, with a consequent dissolution of the attachment. What advice would you give the indorsee?

3. A statute of the forum provides that no action shall be brought to charge any person upon any agreement that is not to be performed within the space of one year from the time of making unless the promise or agreement, or some memorandum or note thereof, is in writing signed by the party to be charged.

P, S and S2 gave a promissory note to C for a loan made by C to P. On maturity of the note C orally promised P to extend the time of payment four years at an increased rate of interest. For more than three of those years P paid interest when due. Before the expiration of the four years, C sued P, S and S2 on the note. Have the defendants any valid defenses?

4. A creditor by fraud induced the debtor to give him a bond. The surety on the bond was ignorant of the fraud. Discuss the surety's rights and liabilities.

5. In 1942 P entered into a contract with a city for the construction of sewers. He gave a bond conditioned upon the faithful performance of his contract and prompt payment for all labor and materials used in the work. S was surety on the bond. In 1943 P paid to the materialmen \$5000 from payments made to him by the city under its contract. At his request the materialmen applied these payments on pre-existing debts arising out of prior transactions not secured by S's bond. In an action against S on his bond, has he any defense?

6. The state of F made a certain bank a depository of state funds to the amount of \$5,000 and took a surety bond from S to secure the deposit. Later, to permit an increase in the amount of the state's

deposits from \$5000 to \$10,000, the bank pledged municipal bonds with the state. The bank became insolvent and the state then had on deposit \$8000. Discuss the rights and liabilities of the state and S.

Would any difference be caused if there were a statute as follows:

"In proceedings to wind up an insolvent bank in which state funds were deposited, the state shall continue to be a preferred creditor, and in cases where a bond with sureties has been given by the depository as security for such deposit, then the state may proceed either as a preferred creditor against the assets of the insolvent depository or as the obligee on such bond against the surety or sureties thereon, or against both as the Treasurer of the State shall deem advisable, but in case the state receives or recovers any amount of its claim from such surety or sureties, the latter shall not, by reason thereof, be subrogated to the claim of the state against the assets of the insolvent depository as a preferred creditor."

FINAL EXAMINATION IN SECURITY II (Law 21b)

Second Semester 1944-1945

Professor Holt

Give reasons for your conclusions. Be sure that you consider all the possibilities of a question. Statutes discussed in the course should be considered when pertinent.

1. M conveyed land in State X by absolute deed, intended as a mortgage, to E and put E into possession under an agreement that E should reconvey to M. M assigned his rights to plaintiff. Plaintiff brings an action to recover possession of the land. What disposition of the case?
2. To secure a loan of \$1000 made to him by C, M executed a mortgage to C of Blackacre, with a covenant of general warranty. Blackacre was in a "title" state, but at the time of the execution of the mortgage M did not own it. He later acquired it through a conveyance from S by then paying to him the \$1000 borrowed from C and executing a mortgage on Blackacre to S to secure payment of \$2000, the remainder of the purchase price. All deeds were promptly recorded and C and S acted in good faith and S had no knowledge of C's mortgage.
 - (a) Who is the junior mortgagee?
 - (b) May he maintain ejectment against M? Against the other mortgagee?
3. M gave a mortgage of Blackacre to T as trustee to secure an issue of negotiable bonds. The mortgage was promptly recorded. M then gave a second mortgage of Blackacre to E, a bona fide lender without actual knowledge of the mortgage to T. This mortgage was likewise promptly recorded. M subsequently issued the bonds, some to holders for value who had no knowledge of the second mortgage and others to holders for value with such knowledge. On foreclosure proceedings to which all persons in interest are parties, how should the net proceeds of foreclosure be distributed?
4. G conveyed Blackacre, which he did not own, by warranty deed to A, who on the same day gave a mortgage of Blackacre to E. O, the owner of Blackacre, later gave a deed of Blackacre to G, who, pursuant to an agreement between him, O and P, gave P a trust deed of Blackacre to secure the unpaid balance of the purchase price. All the deeds were filed for record on May 1, 1944. The deed to A was filed at 1:10 p.m.; the mortgage to E at 1:15 p.m.; the deed from O to G at 2:45 p.m.; and the deed from G to P at 3:00 p.m. What are the interests of the parties?
5. P bought an automobile from S under a contract of conditional sale that provided for payment by installments and that if the buyer should default on payment or fail to comply with any term of the contract, the full amount of the contract price should at once become due and payable at the option of the seller. P failed to pay two successive installments on due date and after the second default S retook the car. Within ten days thereafter P tendered S the amount of the defaulted installments and the costs of retaking and storage charges. S refused to return. P sued in replevin. What result?

6. A statute of State F provides:

"Mortgages not recorded within the time required (ten days after execution) remain valid as against the mortgagor, but are postponed to all other liens created or obtained, or purchases made prior to the actual record of the mortgage. If, however, the younger lien is created by contract, and the party receiving it has notice of the prior unrecorded mortgage, or the purchaser has the like notice, then the lien of the older mortgage shall be held good against them."

D executed a chattel mortgage on livestock to secure a loan to him from the Bank, but the Bank did not record the mortgage until six months had elapsed. At the time of recording the Bank knew D was insolvent. The day after the mortgage was recorded bankruptcy proceedings were instituted against D and in due course he was adjudged bankrupt and T was appointed his trustee in bankruptcy. Prior to the recording no other liens had been fixed upon the livestock covered. Is the Bank entitled to enforce the mortgage over the objection of T?

FINAL EXAMINATION IN SECURITY II (Law 21b)

First Semester 1945-1946

Professor Holt

Give reasons for your conclusions and be concise.
Statutes discussed in the course should be given pertinent consideration.

1. D wished to buy certain machinery from P on credit and P delivered the same to D under a written instrument providing that title should remain in P until full payment of the price by D. The instrument was never recorded and at a time when D was in default and half of the price remained unpaid, D sold and delivered the machinery to B, a bona fide purchaser for full value who knew nothing of P's rights. A statute provides that a chattel mortgage shall be void as against attaching creditors of, and bona fide purchasers without knowledge of the mortgage from, a mortgagee in possession unless the chattel mortgage has been recorded in the manner directed. It defines mortgages as "all instruments conveying property for the purpose of securing the payment of money, whether from the debtor to the creditor, or from the debtor to some third person in trust for the creditor." P brought an action to recover possession of the machinery from D. May he recover?
2. In 1935 M mortgaged Blackacre to E to secure a loan of \$5000. In 1937 M gave a second mortgage to E2 to secure a loan of \$3000. E foreclosed his mortgage in 1940 and at foreclosure sale M was the purchaser, paying \$5000 with money lent him by E3 under an agreement whereby immediately after the delivery of a deed to M at the foreclosure sale, M gave a mortgage to E3 to secure repayment of this loan of \$5000. On M's failure to make repayment in 1943 as per agreement, E3 brought suit to foreclose. E2 intervened, claiming priority. Result?
3. M gave a mortgage on Blackacre to E. E assigned the mortgage to D. Thereafter M conveyed about one quarter of Blackacre to G by a warranty deed. D, knowing of the sale to G, released from the lien of the mortgage the part of Blackacre that was retained by M. The value of that part was sufficient to pay the mortgage. D then sought to foreclose the mortgage on G's land. May he do so?
4. M mortgaged Blackacre to E to secure a loan of \$10,000 made to him by E. Thereafter M conveyed Blackacre to C "subject to" this mortgage. Thereafter C conveyed Blackacre to D, who assumed the mortgage debt; and still later D conveyed to G, who also assumed the mortgage debt.
 - (a) If C pays the mortgage debt to prevent foreclosure, what are his rights?
 - (b) If M is required to pay the mortgage debt, what are his rights?
 - (c) If G is required to pay the mortgage debt, what are his rights?
 - (d) If D is required to pay the mortgage debt, what are his rights?
5. B contracted in writing to buy Greenacre from S for \$10,000, due April 1, 1935. In January 1935, B applied to E for a loan, offering to assign the contract as security. E replied: "I am willing to make the following arrangement. You assign your contract to me and I will simultaneously agree in writing to pay S \$10,000 on April 1, 1935, in return for a deed to Greenacre made out to me, and to let you in possession on that day and to convey Greenacre to you on April 1, 1936, for \$10,500 which you agree to pay on that day, it being understood that the time is of the essence in respect to that payment." B accepted this proposition which was carried out until April 1, 1936, when B failed to pay. E then notified B to surrender possession and on May 1, 1936, brought ejectment. To a complaint in ejectment setting forth the foregoing facts, B demurred. What judgment? Should B be allowed to redeem?

Security I
FINAL EXAMINATION IN CREDIT TRANSACTIONS I
(Law s21a)

150

Summer 1946

Professor Holt

Give reasons for your conclusions, but be concise.

1. D gave to C his negotiable promissory note due six months after date for the amount due from D to C on a contract for D's purchase of an automobile. At D's request his brother, S, indorsed his name on the back of the note. D did not pay at maturity and informed S that the car was of a quality inferior to that called for by the contract of sale. S consults you as to his liabilities to C. What advice?
2. To enable P to secure a loan from C, M executed as maker his negotiable note to the order of P in the sum of \$2500 and I indorsed the same as irregular indorser. P indorsed the note to C for proper value and also gave C a chattel mortgage on a Lincoln automobile as security for repayment of the loan. Without the knowledge or assent of M or I, C later released the chattel mortgage. Rights and liabilities of M and I?
3. C was about to lend money to P. C, P, A and I being present together, C stated that he would require that P, A and B sign a note as co-makers and that I indorse the same as irregular indorser. A and I stipulated that the note should not be delivered to C until so signed by B. P, A and I signed the note as indicated; P forged the name of B and then delivered the note to C, who in good faith advanced the money. Rights of C against P, A and I?
4. (a) S orally promises C in consideration of C's becoming surety on a bond, as D, the principal debtor on the bond, has requested, to indemnify C against loss. Is S's promise enforceable?
(b) D orally promises S in consideration of S's making an accommodation note to the C bank, by which money is obtained from the C bank for D, to indemnify S against loss. Is D's promise enforceable? Is it material whether or not D is a party to the note?
5. "Where forbearance or an act other than a promise is the consideration for a promise, no notification that the act or forbearance has been given is necessary to complete the contract. But if the offeror has no adequate means of ascertaining with reasonable promptness and certainty that the act or forbearance has been given, and the offeree should know this, the contract is discharged unless within a reasonable time after performance of the act or forbearance, the offeree exercises reasonable diligence to notify the offeror thereof."

Frame a hypothetical suretyship case to which this language would be applicable.

TAXATION

(LAW 64)

FINAL EXAMINATION IN TAXATION (Law 64)

First Semester 1944-1945

Professor Sullivan

Maximum Time: 3 hours

1. (a) James Morris was a construction engineer living in Texas. In 1935 he entered into a number of contracts to furnish materials and to perform all work for the construction of buildings according to specifications of named architects under whose supervision the work was to be completed. On January 1, 1936, Morris and other members of his family formed a corporation, the Morris Construction Co. There were two classes of stock: Class A voting common, of which there were only three shares, two of which were subscribed for by Morris, and the other allocated to his wife; Class B non-voting stock, of which there were 97 shares, of which one was taken by a brother of Morris and 32 each by Morris' three children. The par value of the 97 shares was \$10 and Morris paid that amount for the shares assigned to the children and the brother paid \$10 for his share. The life of the corporation was 50 years.

After the corporation was formed, Morris assigned the contracts to the corporation. The Morris Construction Co. then furnished the materials and the services required by the contract. The payments were made by the building concerns to the Construction Co.

The evidence showed that the corporation took over the business on January 1, 1936, and that it continued to employ the engineers and workmen who had formerly been in the employ of Morris. The construction contracts all expressly bind "the said parties, their heirs, successors, executors, administrators and assigns."

The Construction Co. had a profit of \$20,000 in 1936, and it paid the sum out in dividends to the stockholders.

Is Morris liable for income tax on the whole amount or is he liable only for the amount distributed to him in dividends? Why?

(b) The Legislature of State X passed a statute providing that certain property in the state should become community property. If a husband and wife should so elect and file their election with the County Clerk, their property became community property and each had a present interest in one-half the property and income of the community.

H and W filed their election to have their property become community property. They then filed separate income tax returns and each returned one-half of the community income and each took one-half of the allowable deductions.

The Commissioner of Internal Revenue assessed a deficiency against H on the ground that the whole income was H's. H appealed to the Tax Court. What result? Why?

2. In 1931 John Plummer transferred in trust to the U.S. Trust Co. assets valued at \$1,000,000, the trustee to manage the trust and pay one-half of the income from the fund to his son and one-half to his daughter until each shall attain age 40, at which time each shall receive one-half of the corpus of the trust estate. If either the son or daughter shall die before attaining age 40, leaving issue surviving, the one-half of the trust fund held for the benefit of that child to be paid to the issue of the deceased child. If either die before

attaining age 40 leaving no issue surviving, the income to be paid to the surviving child, and in event the survivor shall die before attaining age 40, the principal of the trust to be paid to the issue of that survivor. If both the son and daughter should die before the age of 40, leaving no issue surviving, then trustee is directed to pay over the principal to the settlor, his executors, administrators, or assigns.

Plummer died before either of the children became 40. The son was 36 years old at the death of Plummer, and had one child, aged 12. The daughter was 30 years of age and had a child aged 3.

The Commissioner included the corpus of the trust in Plummer's estate for tax purposes. The executors paid the tax and sue for a refund. What result? Why?

3. John Gotrox died in 1912 leaving an estate valued in excess of \$1,000,000. By his will, he created a trust, the income of which was to be paid to his son, John Gotrox, Jr., for his life, the remainder to be paid to those persons whom John Jr. might by will appoint, and in default of appointment to pay in three equal shares to Jane, Sarah and Lucy.

John Jr. exercised this power by will, appointing to Jane 40% of the remainder, to Sarah 35%, and to Lucy 25%. The Commissioner included the value of the property in the trust in John Jr.'s estate for tax purposes.

The applicable section of the statute follows:

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property

"(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will or (2) during his lifetime."

(a) Was the Commissioner correct in his ruling? Why?

(b) Would the result be the same if the power had been exercised five years before the death of John Jr.? Give reasons.

(c) Is this property to be included for taxation under the Illinois Inheritance Tax Law? Explain.

4. The New Idea Quicksilver Mining Co. owned quicksilver mines in the United States. Mining operations had been carried on for many years. Mercury or quicksilver is obtained from crude cinnabar ore brought to the surface from underground mining operations. The Company found it unprofitable because of shipping costs to sell the ore. It built furnaces adjacent to the mines for the purpose of refining the ore and producing pure mercury. After the refining process, the mercury is placed into casks and it is marketed in that form.

In 1938 the Company discovered a method of increasing greatly the amount of mercury which could be recovered from the ore. For many years prior to 1938, the low quality ores and ores from which the mineral had been partially refined had been piled in huge dumps near the mines. The ore from these dumps was, after 1938, refined again and large quantities of the mineral were obtained.

The Company filed its income tax return for the years 1939 and 1940. The Company deducted 25% of the gross income from the sale of all of the mercury as a depletion allowance.

Assume that 25% is the correct allowance in case of a quicksilver mine.

Is the Company's return correct? Discuss fully.

(See Section 114 (b) (4) of the Code and Regulations.)

5. The United Nations Oil Company had its principal place of business at Homeville, Illinois. Its personal property in that village consisted of office furniture and fixtures, merchandise, goods on hand, machinery and accounts receivable.

The Company filed a personal property return, listing all of these items of property and valuing them at \$60,005. When the assessment rolls were published, the Company found that its property was assessed at exactly the sum at which it had made the valuation in the return.

The Company objected and appeared before the Board of Review. The Board refused to reduce the assessment. The Company then brought suit in the County Court, alleging that the assessment was illegal and asking for a decree that the assessment was invalid. The Company alleged that all other property in the taxing district was assessed at 60% of the fair cash value and that its property was assessed at 100% of fair cash value. The assessor testified that he had visited the premises and he judged that the Company had personal property "well worth \$100,000" and that the assessed valuation represented 60% of that amount.

Should the County Court hold the assessment to be valid? Why?

First Semester 1945-1946

Professor Sullivan

Maximum Time: 3 Hours

1. H died in Illinois leaving property valued at \$2,000,000. By will, H made specific bequests of \$100,000 and the debts of the estate were \$100,000. Paragraph 3 of the will set up a trust to which H gave all the rest and residue of his estate for the following purposes: The trustees were directed to pay \$12,000 a year to H's wife for her life, \$6,000 a year to his mother and \$6,000 a year to his sister for their lives. The trustees were then authorized to pay over to his wife in addition to the fixed income so much of the net income of the trust, or if that be insufficient, so much of the principal as the trustees other than the wife deem proper for the comfort and pleasure of the wife, in the trustees' sole and uncontrolled discretion. The same powers were given the trustees in favor of the mother and the sister.

The will then provided that at the death of the last surviving annuitant, the trustees were to pay over one-fourth of the total remainder to the Charity Hospital, one-fourth to the Y.M.C.A., one-fourth to the Old People's Home of the Ohio Conference of the Methodist Church at Restville, Ohio, and one-fourth to four named nephews and nieces and their issue.

(a) Discuss the liability of the estate for federal estate taxes on H's death.

(b) To what extent are the bequests subject to the Illinois inheritance tax?

Give reasons.

2. The F Baking Company, a corporation, was engaged in business as a bakery. For income tax purposes, it kept its books on an accrual basis. The company purchased flour from the G. M. Flour Mills. During the year 1935, the F Company made purchases under a contract which required the F Company to pay the Flour Mills the price of the flour plus the amount of processing tax which the United States had imposed on the first processor of wheat. The G. M. Flour Mills contracted to contest the validity of the processing tax act, and agreed to repay the Baking Company the amount of the processing tax if it were held unconstitutional by the court.

F Baking Company paid to G. M. Flour Mills \$250,000 in 1935 as the amount of the processing tax, and in its income tax return for that year, it deducted that amount as a part of the cost of goods purchased. The Baking Company paid its tax on that basis.

In 1936, the G. M. Flour Mills received a refund of the processing tax it had paid under protest, and it in turn repaid the Baking Company the \$250,000 advanced by the latter company to cover the amount of the tax.

In 1937, the Baking Company amended its 1935 return and added the \$250,000 to its income in that year. The Commissioner assessed a deficiency in the 1936 tax on the additional sum.

(a) Was the \$250,000 properly deducted by the Company in 1935? Why?

(b) In what year must the Company include this sum as income? Why?

3. Mrs. Sockem attained age 74 in good health. She decided to make some gifts to her children. She therefore conveyed \$200,000 to L. Sockem, her husband, and M. E. Turner as trustees, for the beneficiaries named. The \$200,000 consisted of 4,000 shares of stock in the A Stove Company, a corporation in which Mrs. Sockem and her husband owned a majority of the stock. The trustees were given power to vote the stock.

The trustees were directed to pay the income to an adult son of the settlor and his wife and children during the life of the son. During the son's life the trustees had power to vary the proportionate share of the income paid to the son, his wife, and his two children.

The settlor then gave to the co-trustee power to remove M. E. Turner as one of the trustees and to appoint the successor trustee. The trust instrument declared the trust to be irrevocable except as to the naming of the trustee, and the settlor expressly reserved the right to revoke the appointment of the trustees and to appoint new trustees other than herself.

(a) Has the settlor made a gift which is taxable under the Federal gift tax?

(b) At the death of Mrs. Sockem, is the trust property included in her estate for tax purposes?

(c) Is the income from the trust, income to Mrs. Sockem under the doctrine of Helvering v. Clifford?

Give reasons for each of your answers.

4. Horace Goodman died testate in 1942. By will, he gave all of his property in trust to pay out of the income of the trust, or if the income be insufficient, out of the principal \$12,000 per year to his wife, the said sum to be payable \$1000 per month for her life, "which payments of income are conditioned upon the wife of the settlor first having filed the necessary election to take under the will of the settlor, and if said election shall not be so filed so that the wife shall be entitled to an interest in the estate of the settlor under the intestate laws of Pennsylvania and not under his will, then her interest in this trust estate and the net income therefrom shall be thereby terminated and ended."

The wife elected to take under the will and filed her election.

(a) Is the \$12,000 per year taxable as the income of the beneficiary of the trust? Why?

(b) Assume this to be a life interest. How would you determine the value of this interest for inheritance taxes if the testator had been domiciled in Illinois?

5. One Frank Turk bought a piece of improved real estate in 1943 for the sum of \$25,000. The assessor valued the property for taxes at \$82,000. In the county in which the property is located, assessments are made on the basis of 30% of actual value, so Turk's property's assessed valuation was \$24,600 or approximately the cash paid for it.

Assume that the taxpayer has taken the necessary procedural steps to contest this valuation. In the hearing in the county court on the objections filed by Turk on the ground of over-valuation, the assessor was the only witness for the county. The assessor stated that he had taken the sale price into account in assessing the property.

In addition to proof of the sale at the price indicated, Turk introduced evidence that this property had been in the hands of real estate agents for some years at the price of \$25,000.

Can Turk's objection to the assessment be sustained? Why?

6. The K Company was sole stockholder in three companies, A Co., B Co., and C Co. These companies were not successful and in 1938 all were liquidated and their assets distributed to the K Company.

The A Co. owed property taxes for the years 1936, 1937 and 1938.

The B Co. owed interest to creditors on negotiable notes for the same years.

The C Co. owed corporation income taxes to the United States for the year 1936.

Assume that K Company paid all of these debts of the liquidated companies in 1939.

Which sums, if any, can the K Co. deduct from its income in 1939 for Federal income tax purposes? Give reasons.

TITLES

(LAW 30)

FINAL EXAMINATION IN TITLES (LAW 30)

First Semester 1944-1945

Professor McCaskill

1. In 1915, Harry Peel, seized in fee of an Illinois farm, was dis-seized by White, who lived on the farm continuously to 1920, when he deeded it to Dodson, who took immediate possession. This continued to 1925, when Dodson was dis-seized by Tate. Dodson brought ejectment against Tate, and by that action recovered possession from Tate in 1927. He has been in possession since, and has paid the taxes since 1935.

Harry Peel died intestate in 1917, leaving John Peel, 7 years old at the time, his only heir. John Peel died 11 years thereafter, in 1928, leaving Paul Peel, an infant cousin then 6 years old, his only heir. In 1943, his 21st year, Paul Peel brought ejectment against Dodson, who relies upon two defenses: (1) adverse possession for 20 years; (2) adverse possession for 7 years under color of title and payment of taxes. Judgment for whom upon the above facts? Why?

2. Landlord leased a store in Champaign to Tenant for one year, beginning January 1, for \$3600, payable \$300 monthly on the first of the month. Tenant paid January and February rent, vacated February 28, and failed to pay any further rent. Landlord made no attempt to find another tenant until late in April, and on May 1, leased to Sharp for the remainder of the year for \$1600, payable \$200 per month, and received \$600 for May, June and July. In the meantime, in May, Landlord sued Tenant, his complaint setting out non-payment by Tenant of March and April rent, the necessity of making repairs and improvements to obtain a new tenant on May 1 for the balance of the term, and that \$200 per month was the best rent obtainable, "whereby plaintiff has been damaged \$2200, for which he prays judgment." Tenant did not appear in this suit, was defaulted, and late in July a judgment for \$800 was rendered for Landlord. In October Sharp moved out, leaving August and all rent thereafter unpaid. The next January 5, Landlord sued Tenant for the August to December rent inclusive, at \$300 per month. Upon the above facts what should be the judgment, and why?

3. June 1, 1942, Smith, owner in possession, conveyed an Illinois farm in fee to Jones, reserving to himself a life estate. Full value for his estate was paid by Jones. At the time Smith owed McCormick \$1,000 for farm machinery but, instead of paying McCormick, Smith bought a tractor for cash. Thereafter the tractor was wrecked, and Smith incurred a bill of \$400 to Ford for repairing it. Both McCormick and Ford obtained judgments against Smith in 1943, and took out executions which were levied on the farm conveyed by Smith to Jones, but the deed to which Jones had not recorded until after he learned of the levy of the executions. Before the sale on the executions Jones recorded his deed, personally told McCormick and Ford he owned the fee, and warned them they could sell nothing but the life estate. Before the sale Smith died. Jones appeared at the sale, announced his title publicly, and no one would bid except McCormick and Ford, who jointly bid it in for the amount of their judgments. They bring ejectment against Jones, who took possession after Smith's death. Judgment for whom, and why?

4-6. Ejectment for an Illinois lot by Porter against Drago upon the following agreed facts:

In 1917, Allen, record owner of the lot, conveyed a life estate in it to Clara Hope, remainder in fee to Henry Hope, Clara's brother,

Clara resided in Illinois, and Henry, a crippled invalid, in California. The deed was recorded. Thereafter, the following deeds were given:

In 1919, Clara Hope, spinster, to Drago, a quitclaim in the statutory form, containing the clause: "any after-acquired title in the grantor shall pass by this deed." This deed was recorded at once.

In 1921, Henry Hope, while seriously ill with pneumonia, without knowledge of his sister's deed to Drago, had Eserow, a lawyer, draft a warranty deed to the lot to Clara, his sister. After signing, sealing and acknowledging it, he handed it to Escrow, saying: "Even if I lick this pneumonia, I will probably not live many years. Take this deed, Escrow, and when I die send it to my sister." Henry recovered from the pneumonia, and lived until 1943, but never said anything further to Escrow about the deed. In 1942, Henry deeded by warranty deed to Porter, the plaintiff, who paid full value without knowledge of the deed to Clara, and who recorded his deed before Henry's deed to Clara was recorded. Clara died subsequent to the death of her brother, and before Porter brought this ejectment suit against Drago.

Drago relies on (1) adverse possession for over 20 years; (2) the fact that Clara came into a fee by Henry's deed to her, and that this passed to him as of 1919 by virtue of Clara's deed to him, which was recorded before Porter's deed, and that the time of recording of the deed to Clara from Henry is immaterial. Porter denies these contentions. Decide the case.

7. Suppose in the preceding case, all other facts being the same, that Clara died a month before Henry handed his deed to Eserow, Henry not knowing of her death, and Drago not learning of it or of the deed by Henry to Clara until just before the trial; would these changed facts have any bearing on Drago's claim of adverse possession, title by estoppel, or Porter's right to recover?

8. Action in an Illinois court by Phillips against City of Champaign, Drummond and Denny, jointly, or in the alternative, for damages for personal injuries sustained by being thrown from a milk wagon while about to deliver milk. The evidence under pleadings proper to present the issues showed that Phillips was a new driver on the milk route, unfamiliar with the street conditions, and that before daybreak, on a wintry morning, the left front wheel of his wagon broke through a thin crust of ice covering a hole in Drury Lane, south of the center of the Lane, and directly in front of a house and lot owned by Denny. The dropping of the wheel into the hole caused Phillips to be thrown from his milk wagon and seriously injured. The Lane was paved with cinders, and the hole had been in it for months. Drummond, owner of the acreage property, had divided it into lots facing on an east and west street laid out by him on an unrecorded plat, the street being indicated on the plat as Drury Lane, and being 30 feet wide. Drummond sold lots on both sides of the Lane by metes and bounds descriptions, beginning "at a point on the (north or south) side of Drury Lane (indicating the point as so many feet west of the west boundary of Grand Avenue in Champaign), running thence westerly along Drury Lane 60 feet, thence (north or south) 160 feet, thence east 60 feet, thence to the point of beginning." Drummond originally spread gravel and

cinders over the Lane. Denny bought his lot 25 years before the accident in question and built on it. Drummond built on the lot across the Lane to the north, and owned and lived on it at the time of the accident. All other lots had been sold by Drummond. For over 20 years the public had been using the Lane for access to the various lots on it and for general highway purposes. The property was within the corporate limits of Champaign, but no action had ever been taken by its council or commissioners concerning Drury Lane. From time to time Drummond had caused loads of cinders to be spread over the Lane, but none had been spread for over a year prior to the accident. Upon this proof, each of the defendants has moved the court to instruct the jury to find it not guilty. What should be the ruling? Why?

FINAL EXAMINATION IN PROPERTY III (TITLES) (Law 30)

Second Semester 1945-1946

Professor Summers

1. In 1920 T owned Blackacre and O owned Whiteacre, adjoining tracts of land in Illinois. In April 1920, T and O erected at their joint expense a line fence between their respective tracts which, due to a mistake in locating the boundary, encroached 20 feet upon the land of O. T died January 1, 1921, leaving a will by which he devised Blackacre to his wife W for life with remainder in fee to his son S. T was living on the land with his family at the time of his death and W, thereafter, continued in possession. W died in 1931 and S took possession. O died intestate on July 1, 1921, leaving as his sole heir his daughter D, aged six months. July 1, 1942, D, after a survey of her land had disclosed the correct boundary between Blackacre and Whiteacre, brought an action of ejectment against S to recover the twenty-foot strip. Should she recover? Why?
2. L, owner of a dwelling house, leased it to T by a valid lease for a term of five years commencing January 1, 1941, for a rental of \$100 per month. June 1, 1943, T vacated the premises and mailed the keys to L with a note stating that he was moving out of the state and would no longer pay the agreed rent. Without further communication with T, L took possession of the premises for the purpose of repair and painting, which took two months. On August 1, 1943, L leased the premises to X for a term ending January 1946, at a rental of \$90 per month. L now brings suit against T to recover \$200, covering the loss of rent for the months of June and July, 1943, and to recover \$10 per month from August 1, 1943, to January 1, 1946. Should he recover? Why?
3. In January 1930, O, the owner of a tract of land in Illinois, executed a deed by which he conveyed the land to his grandson, G, but reserved in himself a life estate in the land. At the date of the execution of the deed, the grandson was 15 years of age and lived with his parents in Portland, Maine. O enclosed the deed in a sealed envelope addressed to his grandson, the grantee, and placed the envelope in his safety deposit box in a bank to which the grantor alone had access. At the same time he wrote a letter to G stating that he had executed the deed and had placed it in the safety deposit box, and adding: "At my death and when notified of my death, present this letter to the Champaign National Bank, Champaign, Illinois, and the envelope containing the deed will be handed to you. I suggest that you immediately file it for record." O died in 1945 and G procured the deed from the administrator of O's estate and recorded it. In a suit brought by O's heirs, the validity of the deed was questioned on the ground that it had not been delivered. What should the court hold? Why?
4. In 1930 Jones acquired the ownership in fee of a tract of land which was described in part in the deed as "bounded on the easterly side by the X River." In 1935 Jones executed a deed to the county authorities by which he conveyed an easement for highway purposes covering a 60-foot strip along the easterly side of his land. In this deed, after describing his land, Jones described the strip conveyed as "a strip of land 60 feet wide along the easterly side of the above described land and bounded on the easterly side by the River X." In 1936 Jones conveyed to Smith several acres off of the north side of his land and described the part conveyed as "bounded on the east by the public highway." A valuable tract of land has now been formed on the east side of the road by accretion. Smith claims ownership of that portion which is opposite his own tract but Jones claims all of it. To whom does the land belong? Why?

5. In 1930 A owned two building lots on the northeast corner of Oak and Elm Streets in the City of X. The lots face Oak Street, lot 1 being on the corner of Oak and Elm and lot 2 being the inside lot. In 1930, A built a house on lot 2 and laid sanitary and storm sewers across lot 1 to reach the city sewers in Elm Street. A's house had no basement and the sewers where they crossed lot 1 were only five feet under the surface. In 1944 A conveyed lot 1 to B by warranty deed which contained no mention of the sewers. A did not disclose to B the presence of the sewers in lot 1. In excavating for the basement of a house to be built upon lot 1, B broke the sewers. He plugged them where they entered his lot and proceeded with his excavation to the depth of eight feet. A brought suit against B for breaking the sewers, claiming an easement therefor across lot 1. At the trial evidence was introduced which showed that A could legally build sewers to serve his property along the parking on Oak Street to the Elm Street city sewers at a cost of \$300. What decision should the court make? Why?
6. In 1940 A conveyed a tract of land in Illinois to B, using therefor the form of deed set out in Section 8 of Chapter 30 of the Illinois Statutes. At the time of this conveyance, A was not in possession of the land. B went into possession and in 1942 conveyed the land by quitclaim deed to C. In 1944 X, the true owner of the land, brought an action of ejectment against C and recovered judgment. C now brings suit against A for breach of covenants for title, claiming to recover for breaches of covenants of warranty and of seisen. Should he recover for breach of either of these covenants? If so, Why?
7. In 1940 A conveyed a tract of land in Illinois to B, and to secure a part of the purchase price B executed a mortgage of the same land to A. A recorded the mortgage upon the date of execution but B did not then record the deed. In 1941 A died leaving H as his sole heir. On June 1, 1941, H conveyed the land to C for value. C had no actual notice of A's deed to B. B filed his deed for record on June 2, 1941. C filed his deed for record on June 10, 1941. C now brings a suit to quiet title to the land in question against B. Should he recover? Why?
8. In 1943 Roe conveyed Blackacre by warranty deed to Doe. This deed was recorded immediately but was improperly acknowledged. Roe did not own the land, the title thereto being in Buck. Roe died in 1944, and Stag was his sole heir. In 1945 Buck conveyed the land to Stag for value. Stag had no actual knowledge or notice of Doe's claim to the land. Stag has recorded his deed. The land in question is a vacant lot and has not been occupied by Doe at any time. Doe now brings a suit against Stag to quiet title. What result? Why?

TORTS

(LAW 2a and 2b)

NAME _____

165
NO. _____

FINAL EXAMINATION IN TORTS (LAW 2a)

First Semester 1944-1945

Professor Weisiger

1. A attacked B, who, in his own defense, struck C, reasonably mistaking C for A. If B would have been privileged to use the force on A which he used on C, is B liable to C?

2. Y's car was parked on a street. X mistook it for his own and started to drive it away. Y came up and demanded the car, but X still believed it was his and not Y's. Was Y privileged to use force to re-take the car?

3. A, who was to have a tooth extracted, took an anesthetic. The dentist without A's consent also removed another tooth that was impairing A's health and which should have been treated in no other way. Is the dentist liable to A?

4. A threw a rock through a window of Y's home. A thought Y and his family were away, but they were not. Y's daughter narrowly escaped being hit and was frightened as she saw the rock come through the window. Did A commit an assault?

5. X, an insane man, ran into Y's yard and, without provocation, killed Y's dog. Is X liable in damages to Y?

6. Discuss consent as a bar to an action for trespass.

7. A began to beat B, his servant, with a club. B ran into a store and went behind a counter to conceal himself. B ran against a faucet in a vinegar barrel and a loss of 10 gallons of vinegar resulted. Is A liable to the owner of the store?

(Answer may be continued on next page)

NAME _____

NO. _____

FINAL EXAMINATION IN TORTS (LAW 2b)

First Semester 1944-1945

Professor Weisiger

1. In an action for malicious prosecution, the defendant offered evidence as to the plaintiff's guilt which was unknown to the defendant at the time of the prosecution. For what purpose is the evidence admissible? Not admissible?

2. State the basis of distinction between absolute privilege and conditional privilege in defamation with an example of each type of privilege.

3. A, while visiting at B's home, slipped on a small rug on a highly polished floor and was hurt. Is B liable for A's personal injury?

4. A drove at a high rate of speed on a city street, consciously heedless of intersections. B, without exercising due care for his own safety, attempted to cross a street and was run over by A. On what ground, if any, may B recover damages from A?

1. The purpose of this document is to provide information regarding the activities of the [redacted] in the [redacted] area. The information is classified as [redacted] and is to be handled accordingly.

2. The [redacted] has been identified as a [redacted] and is currently active in the [redacted] area. The [redacted] is [redacted] and is [redacted] to the [redacted] area.

3. The [redacted] is [redacted] and is [redacted] to the [redacted] area. The [redacted] is [redacted] and is [redacted] to the [redacted] area.

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10. The [redacted] is [redacted] and is [redacted] to the [redacted] area. The [redacted] is [redacted] and is [redacted] to the [redacted] area.

5. A gave B permission to ride a horse across his farm as B went to and came home from his work. B came home each day after dark but followed a well-defined road across the farm. A, forgetting that B used the road, stretched a wire across it about six feet from the ground. B when returning from work ran into the wire and was thrown off his horse and hurt. Is A liable to B?

6. A's cow was running at large on a public highway. The cow was crossing the concrete road and was hit by B's car, driven by B with due care. The car was damaged. A did not know his cow was running at large nor was he negligent in allowing her to get out. Is A liable to B?

7. X wrote a letter to Y stating that a certain race horse was easily worth \$5000 and that it could be purchased from R for \$1000. He told of races the horse had won and the time established by the horse. X had no financial interest in the horse but desired to see his friend Y get a bargain. X was mistaken as to the horse he described and, in fact, there was no reasonable basis for X's mistake.

The letter was opened by Y's wife, who purchased the horse for \$1000 and presented it to Y as a birthday gift. The horse was worth not more than \$300. Is X liable to anyone?

FINAL EXAMINATION IN TORTS (Law 2a)

First Semester 1945-1946

Professor Weisiger

1. A and his family sat in their yard near the public sidewalk in front of their home. B came along and stopped on the sidewalk near them and began singing a ribald song. A approached B and told him to move on or he would knock his block off. B continued to sing and A drew back his fist to strike B. In warding off the blow, B scratched A's arm with his thumbnail. The scratch resulted in a serious infection. What liability, if any, arose from this situation?
2. A was asleep in his room. B locked the door to keep A from a lottery drawing for which A held a large number of chances. B telephoned to A and falsely told him some men were waiting outside his door to beat him up, and promised to call him again when the coast was clear. An hour later and after the drawing, B returned and unlocked the door, and then telephoned to A that he could safely come out. A did not know that the door was locked until the next day. Has A an action against B?
3. A went into B's home to solicit money for a charity fund. He saw on a table B's fraternity key with the name, James M. Stone, engraved upon it. A had recently lost such a key and he told B he was happy to find his lost key. Both A and B had the same name, including the middle initial, but neither knew the name of the other. A started to walk away with the key. Was B privileged to use force to prevent A's carrying it away?
4. In an action by A against B growing out of a collision of the cars they were driving, the court charged the jury if B was driving without a driver's license as required by statute, this was evidence of negligence on the part of B. Was the instruction correct?
5. A borrowed B's car to go on an errand for himself. B gave A the keys and told him where the car was parked. After using the car, A parked it where he found it but failed to remove the ignition key or to lock the car doors as he had found them. A thief stole the car and damaged it in attempting to make a get-away. Is A liable to B for the damage to the car?
6. Discuss the doctrine of *res ipsa loquitur* as it affects tort liability.
7. Write a page discussion of mistake and accident as related to tort liability.

FINAL EXAMINATION IN TORTS (LAW 2b)

First Semester 1945-1946

Professor Weisiger

1. A told his wife, W, that C, a clerk in M's store, frequently ran out during the course of a day and got a drink of whisky at a tavern near the store. At a bridge party W repeated this to R, the wife of M, who in turn passed on the report to M. On the basis of this statement, M terminated C's employment.

(a) Assuming the statement to be false, discuss the liability of any of these parties except M to C.

(b) Assume the statement to be true.

2. A started a proceeding in which B was summoned to appear and defend a claim based on a promissory note in A's possession. A knew B had several months earlier paid the note in full. In the trial, judgment was for B. Has B an action against A?

3. D and C knew that C was desperately involved in financial difficulties in his business. They went to A to obtain a loan for C. A and C were strangers but A had known D several years and regarded him as a reliable man. D asked A to lend C \$5000, and said to A: "C is engaged in a growing enterprise. If you make the loan and C does not repay it when due, I will repay it myself." A lent the money and C signed a note for one year. Soon afterwards, C was bankrupt and A could realize nothing on the note. Is either C or D liable to A in deceit?

4. X knew that his brother Y was engaged in a game in which Y would drive at a high speed on a city street at night without lights on his car. X was permitted by Y to ride in the car so X could witness the outcome of the contest. When Y was driving at 50 miles per hour, he collided with a car driven at a similar speed by D. D was driving on the wrong side of the street and was heavily intoxicated. X was killed in the collision. Discuss any claims that may arise under a death statute.

5. A borrowed B's horse to ride into the country on a business errand. A was permitted by C to tie his horse to a post in C's lot while A talked with X, a few rods distant. The horse became frightened, broke loose, and ran into the highway and then into X's field of corn. If the horse was properly and reasonably tied to the hitching post, is anyone liable to X?

6. D negligently ran over a child in the street with his car. X, a pregnant woman who was standing on the sidewalk, saw the occurrence and suffered a nervous shock which ultimately resulted in a miscarriage. Discuss D's liability to X.

TRADE REGULATION

(LAW 61)

FINAL EXAMINATION IN TRADE REGULATION (Law 61)

First Semester 1945-1946

Professor Goble

GIVE FULL BUT CONCISE ANSWERS TO ALL QUESTIONS

1. P was the sole grocer in the small town of X. Prices charged by him were excessively high. D operated a general store in the same town but had never handled groceries. It was suggested to him that he ought to sell groceries and put P out of business or make him lower his prices. Acting upon this suggestion, D put in a stock of groceries and sold them for much less than P was charging. He even found he could make money on his entire business by selling the groceries at cost, because it brought many new customers to his store for his other goods. He therefore sold his groceries at cost and P was forced out of business. Discuss the question as to whether D has violated a duty owing to P.

2. Armour & Co., plaintiff, was organized in 1868 by Philip D. Armour and has since that time been engaged primarily in the preparation of meats for consumption. In recent years the company has extended its operations into other fields, such as the manufacture of glue, sandpaper, curled hair, ammonia, fertilizer, soap, dairy products, operation of refrigerator cars, etc. Its products are all known as "Armour" products. Gradually the plaintiff's business has extended throughout the United States and many other countries. The company, however, has never engaged in the automobile or tire business, and has no present plans for doing so.

The Armour Tire and Rubber Co. was formed in 1920 for the purpose of engaging in the manufacture and sale of automobile tires, and other rubber goods, its location being at Dayton, Ohio. Its tires were known as "Armour Master" and "Armour Cords." The defendant alleges that it chose the name "Armour" for its products because the word signified strength and stability. Plaintiff files a bill for an injunction against defendant's use of the word "Armour" on or in connection with any of its products. Result?

3. The defendant was employed in plaintiff's school in Providence, Rhode Island, for the purpose of teaching French. In the contract of employment, the defendant covenanted that for one year after the termination of his service with the plaintiff, he would not teach French or German elsewhere in Rhode Island. After the termination of his service, in violation of this contract, he gave lessons in French in Providence. This suit is brought to restrain him from so doing. The defendant demurs to the bill. What should be the ruling on the demurrer?

4. Lanier, a physician, took Rakestraw, another physician, into partnership with him under a contract which prohibited Rakestraw from "practicing medicine within a radius of fifteen miles from the town of Oliver if the partnership should be dissolved," which could be done by one giving the other thirty days notice. The contract further provided that in case of the violation of this covenant, \$1000 liquidated damages should be paid by Rakestraw. After the partnership had existed for ten months, Lanier gave Rakestraw notice of dissolution, after which Rakestraw continued in practice in the town of Oliver for himself. After one year, Lanier sues for \$1000 damages and asks for an injunction. What disposition should be made of the bill?

5. The plaintiff was engaged in the business of auctioneering jewelry and other personal property. His business was located at 507 Canal Street, New Orleans. Defendant owned an adjoining store in which he also sold jewelry and similar wares. The defendant placed in his show window adjoining the entrance to the plaintiff's store a sign in large letters reading, "Don't be misled. This store and window

display has no connection with the would-be auction next door. Our entrance is at the corner." The plaintiff sues for damages and an injunction, alleging that the sole objective of the defendant in placing said sign in his window was to excite the distrust of the plaintiff's customers as to the honesty of his business, as a result of which he had been damaged to the extent of \$1500. The defendant denies that said sign was placed in the window for the purpose of interfering with plaintiff's business, but was for the purpose of directing customers into the proper entrance to the defendant's store. In addition, the defendant filed a cross-action against plaintiff alleging that the plaintiff placed "cappers" or dummy bidders within and without his own store who represented that the defendant's window display of jewelry was the plaintiff's display and who coaxed and pushed the defendant's would-be customers into the plaintiff's store where they were swindled and sold cheap goods. The defendant also charged that the plaintiff's auctioneer was so loud and noisy that he disturbed the defendant in his business and was a public nuisance. The defendant asks for an injunction and an abatement of the nuisance. Dispose of the case.

6. The Eastman Kodak Co., a corporation engaged in the manufacture and sale of photographic apparatus, in the course of a period of 15 years acquired the ownership of the property and business of about 20 competing concerns throughout the country, whose plants were dismantled and the business discontinued or transferred to its own plants. Officers and managers of corporations selling to the Eastman Co. agreed not to engage in a competing business anywhere in the United States for terms of from 5 to 20 years. The Eastman Co. also obtained entire control in the United States of the imported raw photographic paper. In contracts with its dealers to whom it sold, it fixed resale prices and required them to sell its goods exclusively. By such means it secured control of from 75% to 80% of the photographic supply trade of the country. The United States charges violation of the Sherman Anti-Trust Law, and asks an order directing a discontinuance of the alleged illegal practices, and a dissolution of the corporation. Dispose of the case.

7. The White Castle System, the defendant in this case, began business in Wichita, Kansas, in 1921. It engaged in the sale of hamburger sandwiches and other food products, using as a building a white structure designed like a miniature castle which it called the "White Castle." It also used the slogan "Buy 'Em by the Sack." The business expanded from Wichita to Omaha, Kansas City, St. Louis, Louisville, Cincinnati, Indianapolis, Minneapolis, St. Paul, Chicago, Columbus, Newark, New York, and finally Detroit. It now includes 120 stands in the major cities in eleven states. The System catered especially to the trade of the traveling public and most of its stands were along main highways.

In 1926, The White Tower System, Inc., the plaintiff in this case, began a similar business in Milwaukee using a building similar in design to the White Castle under the name "White Tower" and the slogan "Take Home a Bag Full." The White Tower System, Inc. had been attracted to the possibilities of the business by the defendant's success in Minneapolis and elsewhere. They deliberately used one of defendant's stands as a model, obtained measurements thereof and later secured plans and specifications of defendant's buildings for the use of their architects. The plaintiff employed one of defendant's counter men at four times the salary received from defendant to install the equipment. It was part of the consideration for his employment that he should give information about the White Castle methods.

The plaintiff set up a stand in Detroit in 1928 and the defendant in 1929, after which time the plaintiff filed this bill seeking an injunction against the defendant. The defendant filed a cross-bill seeking similar relief. Dispose of the bill and the cross-bill.

8. The Excel Electric Corp., an Illinois company, a manufacturer of flash-lights, dry cells and storage batteries, in 1922 adopted as a part of its corporate name and sought to register as its trade-mark the word "Excel" for use on its products. Thompson, also of Illinois, who had for many years prior to 1922 manufactured and sold "Excel" locks and keys throughout the United States, opposed the registration. The Commissioner of Patents ruled for the applicant and granted the registration on the ground that Thompson had not previously registered "Excel" as a trade-mark, and also on the ground that locks and electrical equipment were not in the same class. Thompson appealed from the decision of the Commissioner to the Court of Customs and Patent Appeals (the court established by the Congress for appeals from the Commissioner of Patents).

Sec. 85 of the United States Trade Mark Act provides that "No mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark . . ."

Sec. 95 of the same Act provides, "Any person who shall without the consent of the owner (of a trade-mark) reproduce . . . or colorably imitate such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration . . . shall be liable to an action for damages . . ."

(a) What should the Court do with the case?

(b) Suppose Thompson had asked for an injunction against the Excel Electric Corp. in the Federal District Court in Illinois. What would have been the result?

(c) Suppose the Federal Trade Commission after an investigation had issued a cease and desist order against the Excel Electric Corp. Would the order have been upheld in the Federal Court? .

TRIAL PRACTICE

(LAW 4b)

Summer 1945

Professor McCaskill

1. D, a resident of Sangamon county, Illinois, was served with a summons issued out of the circuit court of Champaign county in a suit brought there by P to collect \$500 borrowed money. By a proper motion for that purpose, supported by affidavit showing his residence, D moved to change the venue to Sangamon county. The Champaign county court denied the motion. D, upon advice of his attorney, then refused to do anything further. A judgment was rendered against him by default, from which no appeal was taken. An execution on this judgment was levied on D's property. D has brought a suit against P to enjoin the sale of his property on the execution, claiming the Champaign county court had no jurisdiction, and that its judgment is void. Should the injunction be granted? Give reasons.

2. Mattoon is in Coles county, Illinois. That city has a city court. It is also the county seat where the circuit court of that county sits. P's complaint against D, filed in the city court of Mattoon, sets out a claim for injuries alleged to have occurred in an automobile accident in Champaign county, Illinois, due to D's negligence. The return on the summons shows that a copy of the summons was left with D's wife, a member of his family over 10 years of age, at D's usual place of abode in Champaign county; that she was informed of its contents, and that a copy of the summons was mailed to D at said address in a sealed envelope with postage prepaid. The return is by the sheriff of Coles county. After this service, but before the time for appearance and answer, the city court of Mattoon, of its own motion, transferred the case to the circuit court of Coles county. That court then issued an alias summons against D, which was served in like manner as the original summons out of the city court. D has appeared specially in the circuit court and moved to quash the service of both summonses, assigning the following grounds: (a) that the city court of Mattoon was without jurisdiction of the subject matter, and that all summonses and orders by it, including the order of transfer, were a nullity; (b) that the circuit court acquired no jurisdiction by the order of transfer of the subject matter, and that its summons was, therefore, likewise void; and (c) that the statute authorizing service of summons in a personal action by service on a member of the family at defendant's abode without any attempt to serve him personally is unconstitutional, and that such service is void. Decide each ground of the motion, giving reasons.

3. P's complaint against D in the circuit court of Champaign county, Illinois, alleged that on April 5, 1940, D bought a Champaign county farm, called Blackacre, from P for \$5,000; that on said date he made a cash payment of \$500, and executed his note for the remaining \$4500, bearing 6% per annum interest, which note was secured by a mortgage of that date executed by D to P; that D has paid nothing on his said obligation, though the note is past due. The complaint was filed in December, 1944, after the due date of the note. A return on the summons recited that a copy of the summons and complaint were personally served on D at his residence in Dayton, Ohio, December 28th, 1944, by a disinterested person, over 21 years old. On February 5, 1945, D not having appeared, upon proof by P of the amount due, the circuit court rendered a judgment in favor of P and against D for \$5900, that being the amount of principal and interest, and directed that the farm Blackacre be sold at public auction to satisfy said judgment. X's bid of \$4,000 was the highest bid on that sale, and he was given a deed by

order of the court. The \$4000 was given to P. For the unpaid balance on his judgment P caused an execution to be levied on another farm owned by D in Champaign county, called Whiteacre. This farm is unincumbered, and is reasonably worth \$7,000. The sale of it on execution is set for next week.

Assuming you have money to invest in farm lands, and that both Blackacre and Whiteacre are good farms, (a) would you pay X \$4500 for his title to Blackacre, assuming the farm to be worth \$6500? (b) would you bid up to \$4000 for Whiteacre at the coming execution sale? State the factors which would enter into both decisions.

4. P has filed a complaint against D in the circuit court of Champaign county, Illinois, for the reasonable value of medical services rendered D over a period of six months, the complaint alleging that P is a regularly licensed physician. The reasonable charges are alleged to be \$350. In an affidavit filed with the clerk P sets out that D, representing that he was poor and unable to pay for medical services, that he had a wife and child who were being supported by the charity of neighbors, and that he, D, was without work or income of any kind, sought the charity of P; that P, relying on D's representations, treated D over a period of six months without exacting any payment or promise of payment; that the services were reasonably worth \$350 in that community; that D's representations were false to his knowledge; that D received a regular and substantial income from investments, and that he had no wife or child. Upon this affidavit the clerk issued a *capias ad respondendum*, and D was arrested. He was also given a copy of the *capias*. You are retained by D. What course would you pursue to best protect his interests (a) from imprisonment; and (b) from payment of the bill, assuming he has a defense? Give reasons fully.

5. The Aetna Fire Insurance Company, a Connecticut corporation, does business and has offices in every state of the Union. It owed D, a resident of Wisconsin, \$5,000 on a policy for a fire loss. On March 3, 1945, P filed a complaint against D in an Illinois court for \$4,000 claimed to be due on unpaid notes, and, on the grounds of non-residence, caused an attachment to issue against D's property in the State. Attachment papers were served on the Aetna Fire Insurance Company at its Chicago office, on March 5, 1945. April 1, 1945, X, a Wisconsin creditor of D, filed an attachment suit against D in a Wisconsin court, and attachment papers were served on the Aetna Fire Insurance Company at its Milwaukee office. The Wisconsin claim was for \$3500 unpaid bills. The insurance company on April 15, 1945, filed an interpleader suit in the U.S. District Court sitting in Milwaukee, Wisconsin, paid the \$5,000 it owed D into court, and made P and X parties to that suit. In the interpleader suit P has proved up his full claim of \$4,000, and X has proved up his full claim of \$3500, D also being a party in that suit, and showing no defense to either claim. How shall the federal court in the interpleader suit dispose of the money paid into court by the insurance company? Give reasons.

6. X, an employee of P Manufacturing Company, was seriously injured in the course of his employment by a servant of the D Paving Company acting in the course of his employment. Both companies are under the Workmen's Compensation Law of Illinois, and carry compulsory insurance to cover payments made to employees injured in service. The P Manufacturing Company has paid X for his injuries, and has, under the subrogation section of the law, sued the D Paving Company to recover back this payment on the ground that the loss was occasioned by the negligence of the servant of the latter. On examination of the jury to determine qualifications to sit, the attorney for the D Paving Company asked a juror his business. The reply was that he was an insurance broker, selling all kinds of insurance, including casualty insurance. He was then asked by the attorney if any company he represented had sold any casualty insurance to either of the companies involved in the suit. The attorney for the P Manufacturing Company objected to this question, and moved for a mistrial because casualty insurance had been mentioned in the examination of the jurors, first by the juror, and secondly by the attorney for the defense. What ruling should the court make on the motion? Give reasons.

7. In a suit by P against D in the circuit court of Champaign county to recover unpaid rent upon an apartment, P filed an affidavit setting forth the nature of his claim, and that D was about to remove from the State, taking all his property with him, and prayed for an attachment writ. The clerk issued a writ of attachment, and the sheriff served it upon D and X. The only property in the hands of X belonging to D was an equity of D in a parcel of land owned by X, but for which D had a contract for conveyance from X when he, D, had completed making agreed payments. D had made all but the last payment of \$500 on a contract for payment of \$5,000. D has moved to quash the attachment of his equity in this land on the ground there are no equitable attachments in Illinois. Should his motion be granted? Why or why not?

Could P enjoin X from making any deed to the land to D until the trial determining D's liability to P? Reasons.

8. Upon trial of a complaint by P against D for injuries sustained by P, due, as it is claimed, to D's negligence, the evidence testified to by P's witnesses, including herself, was that P went into a grocery and market conducted by D to shop for groceries, vegetables and meat; that B had vegetables, including onions, lettuce and cabbage, displayed in open bins in his store, which could be handled by customers. P testified that as she passed these bins looking for potatoes, she stepped upon something slippery, her foot went from under her, her head struck a bin or something, and she became unconscious, waking up in a hospital to find she had a broken leg. Witness X testified she was right behind P when she fell; that she, P, had stepped upon a lettuce or cabbage leaf on the floor, and that this leaf was much wilted and crushed and covered with dirt, and looked as though several people had walked on it. Witness Y testified she had shopped in this store about an hour before P fell, and that as she passed the vegetable bins she saw lettuce or cabbage leaves on the floor, and remarked to the store manager about refuse on the store floor, and that he said he was short of help but would see what could be done. Upon cross-examination plaintiff admitted she signed some paper in the hospital when she was in intense pain, and said the man who asked her to sign it gave her some money, which he said would help pay her hospital bill. She says

he said the paper was a receipt for the money to show his boss he had paid her. He also gave her a bouquet of flowers, and hoped she would soon be well. The bouquet had D's card attached. After this testimony for P, D called the store manager as a witness. He said he did not remember any conversation with Y about the floor, but that it was a fact that help was very hard to get, particularly janitor help; that the store had one janitor and general helper because it could not get more under war conditions, and that four times a day this man swept up around the vegetable bins. He said he heard P scream, and helped pick her up and send her to the hospital; that when he picked her up he did not see any cabbage, lettuce or other leaves on the floor, though on other occasions he had occasionally seen them there. He said he noticed P was wearing very high heels, and that the rubber on them was worn smooth. He said the floor at the place was covered with linoleum, a customary flooring for such stores. Witness Z, called by D, testified he had paid P \$100 at the hospital, and that he told her it was in full settlement of any claim against D, and asked her to sign a release; that she said he was very kind, asked him to read the paper, which he did, and said she understood it to be a release, and signed it. Defendant then rested, and so did plaintiff. Both moved the court to instruct the jury for them, and tendered written instructions respectively to that effect. The judge thereupon discharged the jury, and entered judgment for D. P has appealed. What should the result be on appeal? Why?

9. Suppose in the case stated in No. 8 the judge overruled both motions to direct a verdict, and submitted the case to the jury; that the jury rendered a verdict for P for \$3,000, and that D thereupon moved the court to enter judgment for D notwithstanding the verdict. Should this motion be granted? Give reasons.

10. What is an offer of proof, and under what circumstances should it be made? Is it necessary for a cross-examiner of a witness to make an offer of proof?

Part II - Subjective

1. P, a discharged officer in World War II, now residing in Peoria County, Illinois, brought home from Greece a manuscript purchased by him there, written in Greek and having the appearance of great age. He took the manuscript to Chicago for translation and examination as to its worth. There he met Adolph von Bunk, who pretended to be an authority on ancient documents. von Bunk persuaded him to permit von Bunk to take the document to the University of Illinois for special research on it, von Bunk stating it purported to be an original letter from Aristotle to Socrates concerning the mystery of life. Being unable to get any report from von Bunk and learning that he was about to leave the country, P filed an equity suit against him in the circuit court of Peoria County, Illinois, the complaint under oath stating P believed the document to be an original and genuine letter of Aristotle of great value, and that von Bunk was intending to appropriate it to his own use and to leave the country with it, and would do so unless enjoined by the court. The complaint prayed that von Bunk be decreed to return the manuscript to P, for a temporary injunction without notice restraining him from removing the manuscript from Illinois until the further order of the court, and for a permanent injunction and decree for possession after a full hearing. Upon P's giving bond, the circuit court of Peoria County entered an order for a temporary injunction against von Bunk, and a summons was issued summoning him to answer the complaint. The sheriff of Peoria County went to Champaign County, where he first left with von Bunk a copy of the temporary injunction order. Later he left with him a copy of the summons.

von Bunk has filed a special appearance in the circuit court of Peoria County and has moved (1) to dissolve the temporary injunction on the ground the circuit court of Peoria County was without jurisdiction to enter the temporary injunction since von Bunk did not reside in Peoria County and no part of the transaction complained of took place in Peoria County; (2) that the service of the injunction order and summons on von Bunk in Champaign County by the sheriff of Peoria County gave the circuit court of Peoria County no jurisdiction over the person of defendant; (3) that the court obtained no jurisdiction over defendant to enjoin him until after the service of summons.

Decide von Bunk's motion, giving reasons. Condense the answer into the space before the next question.

2. The Hartford Fire Insurance Company of Connecticut does business and has offices in Illinois and Wisconsin. It owes D, a resident of Wisconsin, \$10,000 upon a policy of fire insurance. P, a resident of Illinois, claims D owes him \$7,500 for borrowed money. W, a resident of Wisconsin, claims D owes him \$7,500 upon money fraudulently obtained. P filed an attachment suit against D in the circuit court of Cook County, Illinois, and served attachment papers on the insurance company at its Chicago office. A month later W filed an attachment suit against D in a Wisconsin court, and served attachment papers on the insurance company at its Milwaukee office. The insurance company, before judgment in either the Illinois or Wisconsin court, filed an interpleader suit in a federal court sitting in Chicago, and paid the \$10,000 owed D into that court. That court enjoined P and W from further prosecution of the attachments in the state courts, and directed them to present their claims before it. This was done, and both P and W proved their claims to the full amount. Upon this proof, how shall the federal court dispose of the \$10,000 deposited with it? Give reasons in not to exceed one page.

TRUSTS

(LAW 16a-16b)

FINAL EXAMINATION IN TRUSTS (LAW 16a)

First Semester 1944-1945

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. No answer should exceed two pages in length. In all answers particular attention should be given to any applicable statute of this state, and to the rules of law followed in this state.

1. The Sugar Corporation was engaged in the manufacture of beet sugar at Mason City, Iowa. It made contracts with farmers in the vicinity of Wells, Minnesota, to grow sugar beets for it. It established in the Wells National Bank of Wells two deposit accounts. The first was designated as the "treasurer's account." In this account the Wells Bank deposited the proceeds of certain notes which the Sugar Corporation had taken from farmers when it made advances to them, and which the Wells Bank had discounted under an arrangement made with the Sugar Corporation. The second account was designated as the "beet pay roll," and was established to provide for payments due from the Sugar Corporation to the growers of beets. It was the practice of the Corporation to forward to the Wells Bank from time to time its checks to be deposited in this "beet pay roll" account. Such checks of the Corporation were in some instances drawn upon the "treasurer's account" in the same bank, and in some instances were drawn upon other banks. Growers of beets were paid by checks of the Corporation drawn upon the "beet pay roll" account. These checks were special checks which had the words "beet pay roll" lithographed across their face. The Wells Bank had no information concerning the identity of the beet growers, and was expected to honor any check drawn upon that account, whether in fact it was drawn to a beet grower or not. Actually, however, no checks were drawn on this account except to beet growers. The Wells Bank became insolvent. At the date of insolvency a balance of \$29,956 remained upon the "beet pay roll." The Sugar Corporation presented a preferred claim against the insolvent bank. What are the rights of the Sugar Corporation?

2. H had pledged as a security for his own debt bonds to the amount of \$16,600, which belonged to his wife, W. One day after this pledge, he executed a paper in which he recited the fact that he had thus used the bonds, and continued as follows:

"I hereby assign to (W) the following property now standing in my name, to secure her from loss in case said bonds shall be forfeited by the non-payment of my said note: (here followed a description of certain shares of stock), the certificates for the same being hereto attached, and I authorize the proper persons to make the transfer of said shares on the happening of the contingency herein stated."

The above writing was signed by H and by a witness. At the time he signed said paper, H said to the witness: "I have used some securities of (W) for the purpose of obtaining money, and in order to save her from possible loss in case of forfeiture for non-payment I am

here setting over to her certain securities of my own, and I wish you to witness this paper as a pledge of those securities." H died insolvent. At his death the above paper was found in a box in which H kept valuable papers. Lines had been drawn with red ink through the names and amounts of some of the stocks originally listed, and other names and amounts had been written in with red ink. On the left-hand margin of the paper was the following notation: "Amended in red ink, 22 Sept./92. H." Attached to the paper were certificates for the stocks indicated in the paper as amended. What are the rights of W?

3. By her will duly executed and probated, T devised certain land as follows:

"To each of my four dearly beloved nieces, A, B, C and D, and their heirs, one equal fourth part undivided, the portion that the said A takes by this will to be held in trust for her by her mother, M."

The four nieces above named, all being of legal age, made a contract to convey the land devised to them to X. The purchaser refused to perform the contract on the ground that the nieces could not make good title. The nieces bring a suit for specific performance against X. What decree?

4. F died leaving a will duly executed which contained the following provisions:

"My real estate that I may own at the time of my death shall be managed for the benefit of my son S until he shall have attained the age of thirty years. The net income therefrom after payment of taxes, cost of repairs, etc., shall be paid to him quarterly. On his attainment of the age of thirty, said real estate shall be transferred to him.

"I appoint E the executor of this will, and direct him to see to it that the provisions hereof are duly carried into effect."

E proved the will in the county court of Champaign County, and it was duly admitted to probate. About a month after said probate, E died. Thereupon the said County Court appointed X as administrator of the estate of F with the will annexed. S now asks you to advise him, (a) what interest he has in the real estate owned by F at his death; and (b) what action he should now take for the establishment and protection of such interest as he may have.

5. S executed under seal an instrument wherein he assigned to T certain described real and personal property upon trusts set out in the instrument. The assignment was duly delivered to T. The instrument contained among other provisions the following:

- (1) That T should pay the net income to S for his life.
- (2) That T should permit S to use and possess during his life, free of rent, a certain parcel of land included in the trust, and should maintain the residence situated thereon in a suitable condition for occupancy by S.

- (3) That T should pay over or transfer to S at any time upon his demand in writing any portion of the trust property described in such demand.
- (4) That T should make no sale of any real property nor any change in the investment of personal property without the written consent of S during his life.
- (5) That S should have the power to revoke the trust in whole or in part at any time by delivering a written statement of revocation to T.

Was the trust valid?

6. T's will contained the following provision:

"I give to my executor the sum of one thousand dollars, said money to be used until the fund is exhausted in the purchasing of flowers which I hereby direct my executor to place upon my grave every year at Easter, Decoration Day and Christmas."

What is the effect of this provision?

FINAL EXAMINATION IN TRUSTS (LAW 16b)

Second Semester 1944-1945

Professor Schnebly

NOTE: Three and a half hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. No answer should exceed two pages in length. In all answers give particular attention to the rules of law developed in Illinois.

1. T devised all her property on trust, providing that after provision for certain annuities "the remainder of the trust property ... shall be used to promote college or university education of children of employees of the Pennsylvania Railroad Company living in the City of Fort Wayne, Indiana." T further provided that "only one person at a time" should receive the benefit of the gift; that the persons to receive the benefits should be chosen by a committee of three designated individuals, in accord with certain prescribed standards; that the boy or girl selected should receive not to exceed \$800 per year, for a period of not more than four years; that "this fund shall be administered as aforesaid until completely exhausted."

T left property the income of which was estimated at about \$2500 per year. She left as her heirs at law nephews and nieces. Advise the heirs what interest, if any, they have in the estate of the deceased.

2. B stole the sum of \$2500 from A, and deposited the same in his account in the X Bank. Prior to this deposit B's account had a credit balance of \$2000. B withdrew the sum of \$1500 from said account and with this sum purchased an automobile. He sold the automobile to C for the sum of \$500 in cash, and the promise of C to pay the further sum of \$500 in six months. A discovered the facts recited before C had made the final payment to B, and demanded that C deliver the automobile up to him, A. C refused this demand. Advise A what further action he should take, if any.

3. By his will duly executed T devised land to his sons, A, B and C, in equal shares, providing that the share of A should be held on trust for A by B, who should pay to A such sums from the income or principal as B in his discretion should deem expedient. Becoming involved in debt, A mortgaged his interest in the trust fund to P to secure a loan of \$1000. Thereafter A borrowed an additional sum of \$1000 from P. On failure of A to pay the last mentioned debt at its maturity, P brought an action at law against A and recovered a judgment for the amount of said debt, and execution issuing on the judgment was returned unsatisfied. P then filed a bill in equity seeking to recover payment of both claims out of A's interest in the trust fund. What decree?

4. S died in 1929 leaving a will giving the residue of his estate to T on certain trusts set out in the will. Included in the residuary estate were 25 shares of the preferred stock of the C corporation. In 1929 these shares were selling at their par value of \$100, and were paying the stipulated dividends of 6%. Shortly after the death

of S, T purchased an additional 25 shares of the same stock. After 1930 the preferred shares of the C corporation began to fall in market value. In 1931 they were selling at \$85 per share, and by 1933 had fallen to \$60, at which price T sold the entire 50 shares. In an action to settle T's accounts, the beneficiaries sought to charge T with the entire loss sustained on the C shares. What decree?

5. W supplied \$3500 toward the purchase price of land bought for \$5000, title to which was taken in the name of her husband, H. At the time of said purchase, W orally agreed with H that he should have an equal interest with her in said property. C, a creditor of H, secured a judgment against H and caused execution to be levied on the said land. W filed suit in equity to restrain sale of the undivided 7/10th interest in the land to which she claimed she was entitled. What decree?

6. S died in July of 1930, leaving a will duly executed wherein he gave certain property to T on trust for A for life, with equitable remainder to B. Included in the property were shares of stock in the C Corporation, upon which a cash dividend of 20% was declared in September of the same year. T credited this dividend to A. Also included in the trust estate was a bond for \$1000 which S had purchased five years before his death at \$1100. T credited all interest received upon this bond to A, and when the bond matured five years after the death of S, T credited the \$1000 received to the account of the principal. In an accounting by T, B contended that the cash dividend above mentioned should have been apportioned; and that T should have amortized the premium paid on the bond by S from the interest payments received. What ruling upon these points?

First Semester, 1945-1946

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer on a new page. No answer should exceed two pages in length. In all answers give particular attention to the rules of law developed in Illinois.

1. P handed over to a teller in the X Bank the sum of \$2900, and received in exchange therefor an instrument which read as follows:

"\$2900
No. 6501

The X Bank
Chicago, Illinois
May 27, 1893

"P has deposited in this bank twenty-nine hundred dollars (\$2900) payable to the order of herself, on return of this certificate.

X Bank."

On June 1, 1893, P went to the X Bank with the intention of exchanging this certificate for \$200 in cash and a new certificate for \$2700. On arriving at the Bank, P noted certain circumstances that aroused in her a suspicion as to the soundness of the bank. She conceived the idea that she ought to withdraw the whole sum, but after a conversation with an officer of the bank, she decided that she would accept a new certificate for \$2700, said officer promising that he would put into a separate package the sum of \$2700, and keep the same until P should call for it. Accordingly a new certificate for the sum of \$2700 was made out and delivered to P. The promise to put aside \$2700 in a separate package was never fulfilled. On June 3, 1893, the X Bank became insolvent. P claimed that she was entitled to a priority of payment over other creditors of the bank. Was this contention correct?

2. For several years D and her husband had occupied as tenants at a yearly rent a certain farm owned by F, the father of D. In July, 1935, F wrote to D as follows:

"I have decided to give to you and Jim (the husband of D) the farm on which you are now living. Hereafter you will not need to pay me any rent for the same. I will make a deed conveying the farm to you and Jim as soon as I can get around to the matter.

(signed) F."

F died intestate in 1938, without having made a conveyance of the farm. He left as his heirs at law D, and a son, S. S filed suit for partition of the farm in question, alleging that as an heir of F he was entitled to an undivided half interest therein. What would you have advised D under these circumstances?

3. F transferred stocks and bonds of the value of \$50,000 to T on trusts set forth in a written instrument. By the terms of the trust T was directed to pay the net income of the trust fund to F for the period of his life. After the death of F, T was directed to pay the net income to D, daughter of F, until she should have attained the age of thirty years, at which time the trust should terminate and the principal should be transferred to D. The trust instrument further provided that F should have power to modify the terms of the trust, or revoke the same in its entirety, by filing a written statement of intent with T; that during his life no

change in the manner of investment of the trust fund should be made by T without the written assent of F; that F reserved the power to appoint a new trustee upon the death, resignation, or inability of T to act. F died five years after the transfer above indicated, and T died three days after F. The administrator of F made demand upon the administrator of T for the property constituting the trust fund, claiming the same as assets of the estate of F. Is he entitled to the same?

4. F died in August, 1941. A few days before his death he stated orally to his daughter, D, that he wanted her to have certain U.S. bonds of the value of \$2000, which were in the hands of his attorney. At the same time he handed to D a written order signed by him, directing said attorney to deliver the bonds to D. At the same time F handed to D an instrument in the usual form of a promissory note, wherein F promised to pay to D or order the sum of \$1000 on demand. F died before D could procure the bonds. S, a son of F, was appointed administrator of F's estate. The attorney delivered the bonds to S. D then made demand upon S for the said bonds. At the same time D filed a claim against the estate of F based on the promissory note above mentioned. Advise S as administrator what action he should take in respect to the demand for the bonds, and the claim filed against the estate.

5. S conveyed land to H by a deed absolute on its face, but in fact on an oral trust for B. At the date of this conveyance H was unmarried. Subsequently H married W. After said marriage H conveyed the land to B without joinder of W in the deed. At the death of H, W claimed dower in the said land. Is she entitled to dower, a claim to which must be enforced in an equitable proceeding?

6. T died in 1938, leaving no near relatives. By his will, duly executed, he left the residue of his estate to his executors on trust, directing them to apply said residue "for such charitable institution or institutions or other charitable or benevolent object or objects in England as my acting executors or executor may in their or his absolute discretion select." The will was duly proved, and the executors proceeded to make distribution of the residue, amounting to over 250,000 pounds sterling, among one hundred and thirty-nine charitable institutions and objects. After the distribution had been made, the next of kin of T challenged the validity of the residuary gift and the distribution made thereunder. Thereupon the executors brought suit to determine the validity of the residuary gift, making parties thereto the next of kin of T, the charitable institutions to which distribution had been made, and the Attorney-General. What decree?

FINAL EXAMINATION IN TRUSTS (LAW 16b)

Second Semester 1945-1946

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. The will of T devised real estate to A, B and C upon trust, with power to sell the same at such time and on such terms as they might in their discretion deem proper. A entered into an agreement with P, a real estate broker, wherein he agreed that P would be paid a commission of five percent upon the sale price of any real estate for which he should find a purchaser. This agreement was signed by A in the following manner: "A, Trustee." P found a purchaser for certain real estate, which was conveyed to the purchaser by the trustees. B and C, however, refused to consent to the payment of the commission which A had promised P. Advise P fully as to his rights in the case.

2. It was agreed between H and W, husband and wife, that W should purchase a tract of land for \$5000, taking title thereto in her own name; that H should furnish \$2700 of the purchase price, and should have a proportionate interest in the land. The purchase was carried out accordingly. The deed to W was duly recorded. After recordation of this conveyance, a judgment for \$7500 was recovered against W by D, on a claim that had arisen several years before the conveyance. D caused execution to be levied on the land above mentioned. H filed suit in equity to enjoin a sale, and to require a conveyance to himself of an undivided 27/50th part of said land. Is H entitled to the relief sought?

3. T died, leaving a will wherein he directed equal division of his estate among his four children, and further provided as follows:

"The share of my estate herein devised to my son Thomas shall be held on trust for him by John Smith, who shall pay the net income therefrom to Thomas during his life at such times and in such amounts as my said trustee shall deem for the best interest of Thomas."

The estate of T was duly administered and one-fourth of the property, amounting to \$25,000, was transferred by the executor to John Smith as trustee. Thereafter Thomas made a written instrument purporting to transfer his equitable interest in said property to P in consideration of a payment of \$10,000. Shortly thereafter Thomas died, leaving a will wherein he devised and bequeathed all his property to his wife, W. He left as his heirs at law W, and his only child, C. Advise P as to his rights.

4. On June 1, P deposited in the A Bank a bill of exchange for \$1000, drawn upon X, and indorsed "for collection and remittance." On that date the A Bank was open for business, but was known by its officers to be hopelessly insolvent. On June 2, X paid the bill to the A Bank by check drawn on the B Bank. An account was settled between the A Bank and the B Bank at the close of business on June 2. In said

settlement it was found that \$5000 was due from the B Bank to the A Bank, and \$4000 from the A Bank to the B Bank. The balance of \$1000 was paid in cash by the B Bank to the A Bank. The A Bank did not open for business after June 2. P asks you to advise him as to his rights against the receiver of the A Bank.

5. The will of T created a trust to pay the income of the trust fund to A for life, and to pay over the principal to B at the death of A. Three years after the death of T, the trustee presented his first report to the court of chancery for its approval. Objections were taken to said report by A, as follows:

(a) Six months after establishment of the trust, the trustee had received a stock dividend of 25%, which he credited wholly to the capital account. A contends that said dividend should have been apportioned.

(b) A year after establishment of the trust, the trustee purchased bonds of a par value of \$100 at a price of \$103. In his account he had set aside a portion of the interest received as an amortization fund. A contends that this action was improper.

(c) Three months after establishment of the trust, the trustee paid taxes on real estate included in the trust, for the year ending prior to creation of the trust. This payment the trustee charged to income. A contends it should have been charged to principal.

(d) Two years after establishment of the trust, the trustee sold real estate for \$7500. In respect to said real estate, the will of T provided as follows:

"My said trustee shall have power in his discretion to sell any real estate at such times and on such terms as he may think proper."

During the period of two years for which the trustee held said real estate, it yielded an income of only \$150, whereas the taxes for said period were \$300. The trustee credited the entire proceeds of the sale to the capital account. A contends that it should have been apportioned.

Which of the above objections, if any, are sound?

6. T held on trust for B \$10,000 in U.S. Treasury bonds, payable to bearer. He transferred these bonds to X, who acknowledged satisfaction of a debt of \$5000 owing to him from T, and paid T \$5000 in cash. X did not know that T held the bonds on trust. With the cash received from X, T purchased a house and lot, taking title thereto in his individual name. Later he transferred the house and lot to Y in payment of a claim for \$4500 which Y held against him. T is now insolvent. What rights, if any, does B have against X and Y?

FINAL EXAMINATION IN TRUSTS (Law s16a)

Summer Semester, 1946

Professor Schnebly

NOTE: Two and a quarter hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. X owned a tract of land upon which was located a spring. Water in this neighborhood was very scarce, and people came here from within a radius of four or five miles to obtain water for their livestock and for domestic use. X wished to sell his land, but to make certain that the spring would be preserved for public use. He therefore executed a deed to a parcel of land containing three acres, upon which the spring was located, conveying the same to "the directors of school district No. 1 in the town of Halleck, in the County of Peoria, Illinois, and their successors in office, for the use of the public ...". Following the description of the land was a recital that "the intention of the conveyance is to convey to the public the spring, etc." This deed was duly recorded. Under the Illinois decisions, this deed created no interest whatsoever in the directors of the school district because they had no power to take title to land for other than school purposes. Can the deed be considered to have any legal effect?

2. By his will duly executed, T devised Blackacre "to A in trust for the use of B forever." On the death of T, A took possession of the land. Thereafter B executed and delivered a deed purporting to convey Blackacre and other parcels of land to C on trust to pay the net income therefrom to B for his life, and at his death to sell and divide the proceeds equally among D, E and F. B reserved the power to modify or revoke the trust at any time by written notice to the trustee. C demanded possession of Blackacre from A, and when the latter refused to deliver possession, C brought an action of ejectment against A. Can C recover?

3. The will of T contained the following clauses:

"Eighth - I give all the rest and residue of my estate to Floyd Crego, as trustee, in trust for the following purposes:

"He shall keep the same invested during the lifetime of my nephew, Frank Root, and shall at the end of the year, or oftener if he shall so desire, pay the net income therefrom to my said nephew.

"Ninth - Upon the death of my nephew, Frank Root, he shall pay to Roy Decker one-third of the net sum remaining in his hands, and if said Roy Decker be dead, then he shall distribute said funds in his hands as follows:

"He shall pay one-half of the sum remaining in his hands to Lula Clark, and one-half to Harry Clark, her husband."

If Roy Decker is living at the death of Frank Root, who are entitled to the beneficial interest in the property given in trust, and in what shares?

4. P handed to a teller in the X Bank the sum of \$2900 and received in exchange therefor an instrument which read as follows:

"\$2900

The X Bank
Chicago, Illinois
May 27, 1893

"P has deposited in this bank twenty-nine hundred dollars (\$2900) payable to the order of herself, on return of this certificate.

X Bank."

On June 1, 1893, P went to the X Bank with the intention of exchanging this certificate for \$200 in cash and a new certificate for \$2700. On arriving at the bank, P made observations which aroused her suspicion as to the soundness of the bank. She conceived the idea that she ought to withdraw the whole amount of the certificate, but after a conversation with an officer of the bank, she decided that she would accept a new certificate for \$2700, said officer promising that he would put into a separate package the sum of \$2700 represented by the new certificate and keep the same in such manner until P should call for it. This promise was never fulfilled. On June 3, 1893, the X Bank became insolvent. P claimed that she was entitled to priority over other creditors of the bank. Was this contention correct?

5. After the death of T in March of 1935, a letter was found among his papers, addressed to B, and dated April 2, 1930. It read as follows:

"Dear B:

"I am hereby creating a trust for you of the property that I own at #405 Elm Street, in the City of X. I shall retain the income of this property during my life, but you are to have it at my death.

(Signed) T."

B had no knowledge of the existence of the paper above set out until after the death of T. Is B entitled to the real estate described therein?

Summer 1946

Professor Schnebly

NOTE: Two and a half hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. By the terms of a private trust, T was authorized to erect a four-story building on certain land. T purchased the necessary materials, and employed the necessary agents and servants for construction of the building, selecting said agents and servants with due care. Because of the negligence of said agents and servants, the wall of a building owned by P, on adjoining land, was caused to crack and fall, and a loss of \$18,000 resulted to P. Advise P specifically as to his rights, and the steps that he should take to enforce them.

2. G was the legally designated guardian for W, a ward. G used \$4000 of W's money to purchase land, title to which he took in his individual name, on May 1, 1935. On June 1, 1937, G sold the said land for \$5000, and deposited said sum in his personal bank account, in which there was a credit balance, prior to said deposit, of \$7000. On June 15, 1937, G withdrew from the bank account \$6000 and used it to purchase shares of stock in the X Corporation. Thereafter he withdrew and dissipated the remaining balance of \$6000 in the bank account. G died insolvent, but still owned the X stock. W has attained his majority. Advise W as to his rights against the estate of G.

3. M died domiciled in Lee County, Illinois, leaving a will wherein she gave all her property to T on trust to pay the net income to her daughter, D, until the latter should have attained the age of twenty-four years, and then to pay over to her the corpus. The will contained the following direction to T:

"To invest the same as to the said trustee shall seem proper, in Government bonds, first farm mortgages or other equally good securities"

At the death of M, her estate consisted of a note for \$16,000, secured by a first mortgage on a farm in Lee County, and the sum of \$442 in miscellaneous personalty. About a year after the death of M, the note mentioned fell due, and T received in payment thereof the principal sum of \$16,000 and \$800 interest. On March 1, 1927, T invested trust funds in the purchase of bonds of the Park Lane Building Corporation, of the par value of \$16,000. At the time of this purchase, the said bonds were selling at \$96 plus accrued interest, and T should have paid for the same the sum of \$15,565. Actually he paid to the broker from whom he purchased the sum of \$16,205, and took back the broker's check for \$640, which he deposited in his private account. The bonds purchased by T were part of an aggregate sum of \$1,700,000 issued by the Corporation to finance the erection of a hotel building, the entire issue being secured by a trust deed of the building and site. The building was completed and the hotel opened for business in May of 1927. Receipts for the first year of operation were far below the estimate of the prospectus issued when the bonds were first offered to the public. Subsequent years of operation showed actual losses, and in 1931 the Corporation defaulted on its bonds. Subsequently the Corporation was reorganized under section 77B of the Bankruptcy Act, and T received in lieu of the bonds he had held 150 shares of stock in the reorganized corporation. On February 9, 1938, D attained the age of twenty-four years, and the time for



termination of the trust arrived. T filed a report showing the trust assets in his hands to consist of the certificate for the shares above mentioned, and a small sum in cash. He asked for an order authorizing him to transfer said assets to D, and discharging him as trustee. Advise D what course of action she ought to pursue.

4. T died in 1922, a resident of Cook County, Illinois. By his will he devised all the residue of his property on trust. The terms of the trust provided that at the expiration of fifteen years after the death of T, if his widow should then be living, the trustee should set aside sufficient of the property to provide her with a net yearly income of \$25,000 for life, and should distribute the remainder of the fund to the children of T, including a son, Daniel. The will further provided:

"No beneficiary herein shall have the right to sell, alien, pledge or assign his or her interest in said trust estate, or any part thereof"

The trustee received under the will property worth about \$2,000,000. In 1930, while the widow of T was still living, P, a creditor of said Daniel, recovered a judgment against Daniel in the sum of \$1500. In 1931, P filed suit in equity against the trustee and Daniel, setting forth the recovery of said judgment, the return of an execution unsatisfied, and praying an order of the court directing a sale of Daniel's interest in said trust fund to satisfy said judgment. What decree?

5. B conveyed Blackacre to T by a deed absolute on its face, which was duly recorded. By a written but unrecorded trust agreement of the same date, it was provided that T should hold Blackacre for the use of B for his life, permitting him to occupy the same, and after the death of B should hold on trust for the children of B until the youngest child should have attained the age of twenty-one, at which time T should sell the land and divide the proceeds among all said children equally. B continued in actual occupancy of the land. T conveyed Blackacre to D, who purchased without knowledge of the trust agreement, and who paid \$5000 in cash, and gave his note for the balance of \$2500, secured by mortgage on the land. Learning of the conveyance to D, B filed suit in equity setting out the facts above recited, praying removal of T as trustee and appointment of a new trustee by the court, and cancellation of the deed from T to D, and the mortgage from D to T. Is B entitled to the relief asked?

UNINCORPORATED BUSINESS ASSOCIATIONS

(LAW 17)

FINAL EXAMINATION IN UNINCORPORATED BUSINESS ASSOCIATIONS (LAW 17)
Second Semester 1944-1945

Professor Holt

Be concise. Give reasons for your conclusions. Consideration should be given to statutes discussed in the course.

1. Beneficial interest in the "Summerside Resort Company" is divided into common and preferred shares represented by transferable certificates. Legal title is vested in trustees under a declaration of trust that provides that the trustees shall have complete power of management, but may not bind the shareholders personally, and shall expressly stipulate with all contracting parties that they "shall look only to the fund and property of the trust." The trustees hold office for three-year terms, being elected triennially at a meeting of the common shareholders; but at a special meeting called for that purpose the common shareholders may at any time by three-fourths vote remove a trustee and substitute another. In case the guaranteed 6% annual dividend on the preferred shares becomes in arrears for three successive years, it is provided that aforesaid voting powers shall vest exclusively in the preferred shareholders until full payment of all arrears. To date all dividends have been regularly paid. The trust may be terminated at any time by majority vote of both classes of shareholders. Plaintiff did some construction work for the Company under a written contract signed by the trustees as "trustees" but having no stipulation exempting the shareholders from liability. In fact the plaintiff did not know of this provision in the declaration of trust. By statute of the state, liability of partners is made joint and several. To recover the contract price, may plaintiff sue A, a common shareholder? May he sue B, a preferred shareholder?

2. A and B purchased an office building with joint funds and took title as tenants in common. They shared the responsibility of its operation, management and maintenance, A having charge of rentals and B of maintenance. It was a large building entirely occupied by offices and storerooms and they devoted all of their time to their respective duties. The only compensation either received was a division of the net profit. One year there was a deficit and they contributed equally to pay it. A had dyspepsia and was on a diet, and it was the custom of his wife to bring his luncheon to him from his home. While driving his car from their home to the office building with his luncheon, she negligently ran over and injured a pedestrian. A made a settlement with the injured party, who knew all the foregoing facts, by giving him his note (A's) secured by a mortgage signed by A on the undivided one-half of the office building. The injured person assigned the note to P, and on non-payment of the note at maturity P consults you as to his remedies. What advice?

3. Parlow, Peterson and Putnam were partners doing business under the name and style of The Renovation Company under written articles of partnership which contained the following provision:

"The death of any partner shall not dissolve the partnership between the surviving partners, but the business shall be continued by the surviving partners and such others as may be thereafter admitted to the firm. The surviving partners shall settle with the estate of any deceased partner as soon after his death as practicable and pay over to him the value of his interest in the business as shown by the books of the firm."

The firm was indebted to Carlson for the full amount of a note for \$10,000 given by it to Carlson and due January 1, 1940. December 23, 1939, Carlson was told by the partners that they were in financial difficulties, but that they would pay the interest to date and give a new note due April 1, 1940. Parlow died December 31, 1939. January 2, 1940, Carlson brought the old note to the partnership place of business and told the surviving partners that he assumed that the business of the firm would be liquidated in view of Parlow's death. They told him that Parlow's death would not affect the business and showed him the articles of partnership. Peterson and Putnam also told Carlson that an extension of his claim would aid them in settling with Parlow's estate. Carlson then stated that in view of their continuation of the business he would be willing to take a new note as had been suggested at the meeting of December 23, 1939. Accordingly, he accepted interest to date on the note outstanding and stamped the same as paid and took a new note executed in the name of The Renovation Company by both Peterson and Putnam. No settlement was ever made with Parlow's estate by Peterson, Putnam or The Renovation Company. April 15, 1940, The Renovation Company filed a voluntary petition in bankruptcy. Carlson filed the note of January 2, 1940, as a claim against the bankruptcy estate and received only 50% of his claim. For the balance he filed a claim against Parlow's estate.

What disposition of that claim?

4. Paul and Peter engaged in the grocery business as partners. In one year they earned considerable money and at the end of the year decided to invest a part of the profits in oil lands, and did so. Title to the land was taken in their names as tenants in common. By the end of two years, when Paul died, the land had greatly increased in value. Paul was survived by a widow and a daughter. Discuss the rights of Peter, of Paul's widow and daughter, partnership creditors, Paul's creditors, to the oil lands.

5. Statute of State F provides that when action is brought against two or more defendants, and summons is served on one or more but not all, plaintiff may proceed as follows:

"If the action be against defendants jointly indebted upon a contract, he may proceed against the defendant served; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served."

Another statute provides that when two or more persons transact business under a common name, the associates may be sued by such common name, summons to be served on one or more of the associates, but the judgment in such cases to bind only the joint property of the associates and the separate property of the party served.

Paul, a resident of State F, Perkins, a resident of State F(2), and Pine, also a resident of State F(2), were partners in a business carried on in State F under the active management of Paul under the name of Paul & Co. Perkins and Pine gave advice to Paul relative to

the firm business by letters written from F(2). Both Perkins and Pine were men of considerable means and the partnership also had large amounts on deposit with banks in State F(2). In the course of the partnership business, and within the scope of his authority as partner, Paul in State F induced C to agree to buy certain property of the firm. C now feels that the contract has been breached and consults you, a lawyer practicing in State F as to the possibility of recovery of damages. What would you advise as to his remedies?

FINAL EXAMINATION IN UNINCORPORATED BUSINESS ASSOCIATIONS (Law 517)

Summer Semester 1946

Professor Woodbridge

1. Alton opened a restaurant in the City of X under the name of "Quality Restaurant." He hired Parker to manage it for him. The oral agreement between the two provided that Parker was to have half the profits of the enterprise, that if there were losses he was to share them equally with Alton, that Parker was to devote all his time to the enterprise, and that the agreement was to continue for two years. Parker borrowed some money from the plaintiff without consulting Alton to meet current expenses giving a note signed, "Quality Restaurant, by Parker." The affairs of the restaurant went from bad to worse and the note was not paid. Plaintiff sued Alton on the note. Alton is insolvent, but he can pay about eighty cents on the dollar to his creditors. What are plaintiff's rights?
2. In checking title to a piece of realty you ascertain that five years ago X purchased the land at an execution sale, that the writ of execution was awarded on a judgment by confession by A alone of the firm of A and B, that the aforesaid firm had purchased the land with partnership funds from C, that the deed from C to the partnership was in A's name alone, and that neither C's wife, A's wife, or B's wife have ever done anything to relinquish any inchoate right of dower that any of these persons might have had. What defects, if any, are there in the title?
3. C. A. Arthur had two sons, D. Arthur and E. Arthur. C. A. Arthur, D. Arthur and J. Adams formed a corporation under the name of "Arthur and Son." They did business under that name for years, but finally met with reverses. E. Arthur never owned any of the stock in the corporation, but was a purchaser for it. Creditors, not being able to collect from the corporation, seek judgments against all the Arthurs mentioned above. What result?
4. A, B, and C were practicing physicians and surgeons who had their office in A's hospital. Their names were on the door and on the bill heads. As a matter of fact B and C had no interest in the hospital; each kept his own fees without any accounting to the others; and B and C paid A a monthly rental. B negligently left a surgical sponge in the plaintiff who was one of B's patients. Plaintiff sued A and C only. What judgment?
5. A firm known as the "West End Market" was composed of A, B, and C. C retired in 1944, no notice of that fact being given. In 1945 the firm accepted from M a \$200 negotiable note payable to the firm in its firm name, and later negotiated the note to X who negotiated it to the plaintiff. M dishonored the note and prompt notice of dishonor was given to A. No notice of dishonor was given to C. Is C liable on the note?

FINAL EXAMINATION IN UNINCORPORATED BUSINESS ASSOCIATIONS-pg. 2

6. In April 1939 one partner, Jackson, ordered certain goods of the plaintiff to be delivered on June 1. The firm dissolved on May 12, 1939. The plaintiff was duly notified. The goods were shipped in the middle of June and accepted by Jackson who was winding up the partnership affairs. May the plaintiff hold the retiring partner?
7. A and B were partners. A purchased a tract of land with partnership funds and took a deed to the tract in his own name. After dissolution A sold the land to X. B, however, was the partner charged with dissolution. X took possession.
- (a) If B brings ejectment, what result?
 - (b) If X files a bill in equity to quiet title, what result?
8. A and B were partners with partnership assets of \$12,000 and liabilities of \$10,000. By mutual consent A paid his individual creditor a debt of \$3,000 and his capital account was charged with that sum. The firm creditors contested the validity of this payment. Give concisely the arguments pro and con.
9. A and B were partners. C, an infant, paid B \$2,000 for his interest in the firm with A's consent. The firm then went into new ventures and lost heavily. As a result B had to pay some of the old debts. What are the rights of B, C, and the old creditors?
10. On separate page.

FINAL EXAMINATION IN UNINCORPORATED BUSINESS ASSOCIATIONS- pg. 3

10. Are the following statements true or false? Please answer on this sheet by circling the correct answer.

(Two points will be deducted for each wrong answer and one point for each statement not answered, not to exceed ten points.)

(1) Dean Ames of Harvard Law School had more to do with the actual drafting of the U.P.A. than any other one man.

True False

(2) Under the U.P.A. an association of two or more persons for the purpose of operating a mutual golf club at cost would be a partnership.

True False

(3) Under the U.P.A. a partner who winds up the affairs of a partnership after dissolution is entitled to a reasonable compensation for his work.

True False

(4) Under the U.P.A. partnership property cannot be levied upon under a writ of execution for the joint individual debts of the partners

True False

(5) Under the U.P.A. the lien of a partnership creditor obtained by a judgment against the partners on the individual property of a partner is postponed to the prior rights of his individual general creditors.

True False

(6) Under the U.P.A. a sale by one partner of his interest therein does not ipso facto dissolve the firm.

(7) Under the U.L.P.A. all false statements in the certificate make the limited partner liable as a general partner.

True False

(8) Under the U.L.P.A. in case of loss the limited partners and the general partner share it pro rata.

True False

(9), (10) Underline the names of people who have written well known books on the law of partnership.

Green, Gray, Freeman, Story, Bates, Mansfield, Lindley,
Daniels, Washburn, Tiffany, Rowley, Crane, Gifford,
Gilmore, Biglow, Marshall, Kent.

VENDOR AND PURCHASER

(LAW 29)

Summer Semester, 1945

Professor Schnebly

NOTE: Three hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. On June 16, 1888, D made a lease to P of the right to remove coal from under certain land during a period of ten years from date. The lease contained the following provision:

"It being further agreed that the terms of this lease may be extended an additional ten years, at the option of the said second party (P), by giving the said first party (D) notice in writing twenty days previous to the expiration of the first term herein named."

P's manager made a note on his diary under the date of May 28, 1898, to write a letter to D exercising the option to renew. The manager was called away from his office on May 24th, expecting to be gone for only a day or two, but he was detained and did not return until June 2nd. On that date he wrote a letter to D, dating it back to May 28th, giving notice of renewal. This notice was received by D on June 3rd. D declined to recognize a renewal, and brought an action in forcible detainer to recover possession of the land. P thereupon filed his bill in equity to enjoin prosecution of said action, and to enforce specific performance of the agreement for a renewal. What decree?

2. P and D entered into an agreement under seal, wherein D agreed to convey to P a farm of 200 acres for a consideration of \$18,000, of which \$500 was paid down at the date of the contract. The further sum of \$7,500 was stipulated to be paid on February 28, 1905. The remaining sum of \$10,000 was to be satisfied on the same date by conveyance by P to D of two residence properties in Chicago. D undertook to convey the farm mentioned by warranty deed at the same time. The contract provided that if P should not perform promptly on the date specified, the contract should become null and void and P should forfeit his deposit. Each party made an inspection of the real estate to be transferred to him under the contract. On February 27, P telephoned to D at his home on the farm, advising him that P would be ready to complete the contract on the following day, and D stated that he would come into town for that purpose. D had not appeared in town by noon on the 28th, and in the afternoon P drove out to the farm with the necessary cash and a deed to the Chicago properties in his pocket. D, however, was not at the farm. On March 1, P met D in town by accident, and stated his desire to complete the contract, but D refused to stop. P followed D into a drug store, and there made a tender to him of the cash consideration and the deed to the Chicago properties. D refused the tender. P brought suit for specific performance. D interposed two defenses: first, that P had not tendered performance on the date set in the contract; secondly, that P had stated that the Chicago properties were worth \$10,000, whereas in fact they were worth only \$6000, and D offered evidence tending to show that the actual value was only \$6000. What decree?

3. D made a written contract with A wherein he agreed to sell and convey to A a certain tract of land for the sum of \$10,000. By the terms of the contract each party thereto deposited with X the sum of \$200, "to insure faithful performance of the contract on his part", and it was further stipulated that the party defaulting in performance should forfeit said deposit. The contract was signed by D without the joinder of his wife. A assigned his rights under the contract to P. At the time set for performance, P duly tendered the stipulated purchase price, but D refused to perform on the ground that he could not procure the joinder of his wife in a deed, and declared his willingness to forfeit his deposit. P brought suit in equity against D for specific performance, asking for a deduction in the amount of the value of the ~~deed~~ interest in D's wife. Discuss three possible defenses which might conceivably be argued on behalf of D.

4. On July 5, 1912, Charles Brown made a contract agreeing to sell and convey to P a truck farm in the outskirts of Chicago, consisting of about five and a half acres, for the sum of \$18,000. Charles Brown committed suicide on July 12, 1912. The price stipulated in the contract was the reasonable value of the farm at the date of the contract. At that time there was a single car line, operating at half-hour intervals, between the farm and the city. About two months after the contract was made more cars were put in operation, so as to run at intervals of fifteen and ten minutes. In the following year a street extension was made by the city which further improved transportation facilities. Owners of property in the vicinity began to subdivide it and sell it in lots for residence purposes. As a result of these changes, the farm in question doubled or trebled in value within a space of two or three years after the making of the contract above mentioned. P brought suit against the heirs of Charles Brown for specific performance of the contract. What decree?

5. P brought suit for specific performance against the heirs of D. The evidence presented in the case established the following facts: That in 1906 P was a young girl, working and attending school in Chicago; that in said year she went to live with her uncle, D, in Kansas, Illinois, upon his oral promise that if she would live with him until his death, he would give her all his property; that she did live with him until his death in 1920; that during the period indicated she did the ordinary housework in her uncle's home; that for several years of said period she taught school in Kansas, and for a further period of time worked as a seamstress, in order to procure the money necessary to maintain the home and provide food and furnishings; that she had declined offers of teaching positions in other cities, and had refused an opportunity to take training as a nurse, in order that she might stay with D; that at the time of his death D left practically no property except the house in which they then resided. On the facts as thus established, was P entitled to specific performance?

6. D made a written contract wherein he agreed to purchase a tract of land from X, and said contract was placed on record. Before completion of the contract, X died, leaving a will duly executed wherein he gave all his personal property to P, but made no disposition of any real estate. X left as his sole heir at law his son H. After the death of X, D announced to H that he did not intend to complete the contract. H made a deed conveying the land mentioned to E for a valuable consideration. P, who was executor of the will of X, filed suit in equity against D, E and H, asking for a decree requiring D to perform the contract specifically, and requiring E to convey title to D upon such performance. What decree?

FINAL EXAMINATION IN VENDOR AND PURCHASER (LAW 29)

Second Semester 1945-1946

Professor Summers

1. March 1, 1945, V and P entered into a written contract whereby V agreed to sell and P to purchase a certain described building lot for a consideration of \$1,000. P paid \$200 upon the execution of the agreement and agreed to pay \$100 per month until and including November 1, 1945, at which time V agreed to deliver a deed conveying merchantable title to the land. In May, after consulting an architect, P decided that the lot bargained for was not wide enough to accommodate the house that he desired to build upon it. Knowing that V owned the adjoining lot, P asked V to sell him one-half of that lot. V agreed to sell such half-lot for \$600 and P agreed to purchase it at that price. P insisted upon a new written contract but V said that it was unnecessary. Thereafter, beginning with June 1, P paid V an additional \$50 per month on the purchase price of the half-lot. P engaged an architect to draw plans for the building of a house on the lot and half-lot, submitted the plans and specifications to contractors for bids and entered into a contract with C for the building of the house, to be commenced on November 1, 1946. On the latter date P tendered the balance of the purchase price to V and demanded a deed. V refused to deliver the deed. P brought suit for specific performance of the contract to convey the lot and half-lot. V pleaded the statute of frauds by way of defense. What should the court hold? Why?

Suppose that before P brought his suit and unknown to him, V had conveyed all of the adjoining lot to B, a bona fide purchaser for value. What judgment should the court give? Why?

2. June 1, 1945, V and P entered into a written contract for the purchase and sale of a dwelling house in Urbana. At the date of the contract, P, the purchaser, lived in Chicago. He had recently been appointed a member of the faculty of the University of Illinois beginning with the fall semester of 1945. This fact was known to V. P paid \$1000 upon the execution of the contract. The contract provided that V should "deliver a warranty deed conveying merchantable title and give possession of the premises on September 1, 1945." V, as agreed, submitted an abstract of title of the property on July 1, but examination disclosed an existing mortgage on the premises. P gave due notice of this defect. On September 1, 1945, V and P met at the office of the broker who had negotiated the contract. V had not secured a release of the mortgage and could not give good title. P was prepared to tender the balance of the purchase price but did not do so after he learned that V was not in position to convey merchantable title. V offered P immediate possession, which P refused. October 1, 1945, P purchased another house in Urbana and shortly thereafter occupied it with his family. On November 1, 1945, having secured a release of the outstanding mortgage, V tendered a deed of the property to P and demanded the balance of the purchase price. P refused to make payment. Shortly thereafter V brought suit for specific performance of the contract. P counterclaimed for the return of the \$1,000 down payment. What judgment should the court give? Why?

3. January 15, 1946, V and P entered into a written contract for the sale and purchase of a tract of land to be consummated May 1, 1946. V agreed to furnish an abstract showing merchantable title. An examination of the abstract by P's attorney disclosed a deed of the land to V from O dated January 2, 1926, but there was nothing in the abstract to show how O acquired the title. The abstract disclosed that T acquired the title to the land in 1925, that T's will was probated October 1, 1925, and by his will the land in question was devised to the children of his deceased daughter Mary. P's attorney advised P not to complete the contract because the abstract did not show merchantable title in V. On May 1, 1946, V tendered P a deed, insisting that he had good title because he had been in

adverse possession of the land for more than twenty years, but P refused to accept it or to pay the purchase price. V now brings a suit for specific performance of the contract. Should the court decree specific performance of the contract? Why?

4. By written agreement dated May 1, 1941, V sold to P a dwelling house for \$10,000. P paid \$2,000 upon the execution of the contract and shortly thereafter went into possession of the premises. P agreed to pay the remainder of the purchase price in four annual installments of \$2,000 each, with accrued interest, on the first of May in 1942, 1943, 1944 and 1945. On the last date V agreed to deliver a deed conveying merchantable title to the property. On April 20, 1945, through the negligence of X, the house was totally destroyed by fire.

(a) Suppose P brings an action for damages against X. At this time P still owed V \$2,000 on the purchase price. Can P recover from X? If so, what should be the measure of his damages? Why?

(b) Suppose that upon May 1, 1945, V tendered a deed of the property to P and demanded the payment of the remainder of the purchase price, but P refused to pay, and V brought suit for specific performance. What should the court hold? Why? Would the court's ruling be any different if P pleads and proves that on May 1, 1945, V did not have marketable title to the land?

(c) Suppose instead of bringing a bill for specific performance, V brought an action against P for damages. Could he recover? Why? If so, what would be the measure of damages?

(d) Suppose V had died April 1, 1945, leaving a will by which he gave his personal property to S, his real property to D, and appointed E executor of his estate. If E desires to enforce specific performance of the contract against P but D refuses to execute a deed, who are necessary parties plaintiff? Why? If in such suit a decree of specific performance is granted and P is ordered to pay \$2,000, the balance of the purchase price, but refuses to do so, how can this decree be enforced? When the money is paid, to whom would it go? Why?

5. January 1, 1946, V and P entered into a written contract for the sale and purchase of 160 acres of land in Illinois for a consideration of \$32,000. P paid \$2,000 upon the execution of the contract. The agreement fixed the closing day as March 1, 1946. Examination of the title disclosed a valid outstanding mineral fee interest in the land created by an exception in a deed dated 1885, conveying the land to a person through whom V traced his title. On March 1, 1946, when V tendered a deed of the land to P, the latter refused to complete the contract because of the aforementioned defect in title, and demanded the return of the \$2,000 paid on the contract, which was refused. P consults you as his attorney. You confer with V and he states that when he bought the land in question, 20 years ago, his attorney advised him that the exception of the minerals in the 1885 deed was not a cloud on the title; he states also that he was in perfectly good faith when he agreed to convey merchantable title to P. You also find out that between January 1, 1946, and March 1, 1946, the market value of the land had increased \$25 per acre. Advise P what suit or suits he may bring against V and what he may expect to recover.

Summer 1946

Professor Summers

1. George Black brought suit against his three brothers as heirs of their father, John Black, for specific performance of an alleged oral agreement of John Black to convey to the plaintiff a tract of 80 acres of land. The allegation and proof upon which the plaintiff relied to support his claim were as follows: In 1940 John Black owned 240 acres of land. One hundred sixty acres of the land, known as the "home place," were situated on the north of a public highway and the other tract, known as the "south 80," was situated on the south of the same highway opposite the home place. John Black's residence was located on the home place, and across the highway on the south 80 there was a small tenant house. In February 1940, George Black owned and operated a hardware store in a nearby town. At this time John, the father, asked his son George to dispose of his hardware business, move his family into the tenant house on the south 80, and operate the whole farm. John explained that he was unable to operate the farm or find a reliable tenant; that both he and the plaintiff's mother were advanced in years and in poor health, and they needed the care of one of their children. John then stated, if George would move to the south 80, operate the home place as a tenant, and take care of his father and mother, that they would give him a deed to the south 80. With considerable reluctance George accepted his father's offer. He disposed of his store and moved to the south 80 in March 1940. After that time he farmed all of the land, paying the father as rent one-half of the produce raised on the home place but keeping for his own all that he raised on the south 80. He remodeled and enlarged the dwelling house on the south 80, and built outbuildings at a total cost of \$2500. John paid the taxes on the whole farm but George reimbursed him for the taxes on the south 80. Shortly after March 1, 1940, the health of George's father and mother was such that they required a great deal of care. The plaintiff's mother died in 1944 and his father in 1945. John, the father, told a number of witnesses that he had given George the south 80 and that as soon as he and his wife were able to get to town, they were going to make George a deed to it. No such deed was ever made. The defendants pleaded the Statute of Frauds, and also contended that, by receiving all of the profits of the south 80, George had been amply reimbursed for his services in caring for his father and mother and for the expenditures he had made for improvements, particularly since the latter were solely for his own convenience and comfort. The market value of the south 80 at the time of the trial was agreed to be \$200 per acre. What decree should the court render? Why?

2. February 1, 1945, V and P executed a written contract for the sale and purchase of a farm for a consideration of \$15,000. Under the terms of the agreement P paid \$5,000 on the execution of the contract, assumed an existing mortgage on the land for \$5,000, and agreed to pay the balance of \$5,000 on February 1, 1946, at which time V agreed to deliver a deed conveying merchantable title to the land subject to the existing mortgage. The agreement contained the following provision: "In the event P shall make default in payment of the \$5,000 on February 1, 1946, then V shall be discharged from this agreement to sell and convey the described land to P; and P shall forfeit to V the previous payment of \$5,000 and give peaceable possession of the land to V." The agreement also contained a clause making time of the essence. On January 25, 1946, P told V that he would probably not be able to pay the \$5,000 on February 1, but that he would certainly pay in a few days thereafter, and asked V if the late payment would be satisfactory. V replied: "You know as well as I do what the contract provides." On February 1, 1946, P did not make or tender payment and V did not tender his deed or state that he was ready to tender it if payment was tendered. On February 3, 1946, P tendered to V \$5,000 and demanded the delivery of the deed. V refused to accept the money or deliver the deed. On February 10, 1946, V conveyed the land by deed to X for a consideration of \$20,000. P went into possession of the land March 1, 1945, and is still in possession. P now files suit against V and X for specific performance of the contract.

V contends that P breached the contract and should not recover, that he (V) is entitled to retain the \$5,000 paid upon the execution of the contract, and that X is entitled to possession of the land. What decree should the court make? Why?

3. On March 1, 1946, Mary Jones, vendor, and John Smith, purchaser, entered into an agreement for the sale and purchase of a house and lot in Urbana. The agreement described the premises as "Lot 2 in Block 3 of the Second Addition to the City of Urbana, Illinois," and expressly provided that the Vendor convey to the Purchaser by quitclaim deed. The law day was fixed on June 1, 1946. The Vendor agreed to and did furnish the Purchaser with an abstract of title to the described lot, but the agreement contained no express agreement on the part of the Vendor to convey merchantable title. On examination of the abstract, the Purchaser's attorney discovered that Mary Jones acquired title to the land through the will of her father, the words of the will being as follows: "I hereby devise Lot 2 in Block 3 of the Second Addition to the City of Urbana, Illinois, to my Daughter Mary Jones and the heirs of her body." The Purchaser notified the Vendor on May 1, 1946, that her title to the land was not marketable and demanded the return of his down payment of \$1,000. The Vendor refused to return the down payment. On May 20, 1946, without making tender of the balance of the purchase price, the Purchaser brought suit to recover his down payment. The Vendor filed a cross complaint asking for specific performance and tendered a quitclaim deed of the property conveying all of her right, title and interest therein. At the trial it was shown that the Vendor had occupied the property for more than 30 years, is 75 years of age, was never married and has no heirs of body, but that she has numerous unknown relatives scattered throughout the United States who are descendants of her seven deceased brothers and sisters. What decree should the court make? Why?

4. On May 1, 1945, Vendor and Purchaser executed a written contract for the sale and purchase of a house and lot in Champaign, Illinois, for a consideration of \$10,000. P paid \$1,000 on the execution of the contract and agreed to pay the balance with interest at 6% on September 1, 1945, at which time the Vendor agreed to deliver a warranty deed of the premises conveying merchantable title and to give possession of the premises. When the agreement was entered into, a paved street in front of the property had recently been completed. The assessment of \$500 on the property for this improvement did not become a lien thereon until September 3, 1945. The taxes on the property for 1944 of \$150 were paid by the Vendor on June 1, 1945. The contract contained no provision relative to taxes for 1944 or 1945 or the special assessment for the street improvement. At the date of the contract, the house was occupied by a tenant paying rent of \$50 per month in advance, and this lease did not expire until September 1, 1945. The lessee paid four months' rent to the Vendor. When the Vendor and Purchaser met on September 1 to close the contract, the Purchaser insisted that there should be deducted from the purchase price \$500 for the street assessment, \$200 rent received by Vendor since May 1, and the estimated taxes for 1945. The Vendor objected to all of these claims and insisted that the Purchaser reimburse him for the payment of the 1944 taxes which he had paid since May 1. Suppose these parties had called you in to adjust their differences. What advice would you give them as to their rights against each other?

5. April 1, 1945, V and P entered into a written contract for the sale and purchase of a dwelling house and lot for a consideration of \$15,000. P paid \$5,000 upon the execution of the agreement and agreed to pay the balance on April 1, 1946, at which time the Vendor agreed to deliver a deed of the property conveying merchantable title. P took possession upon the execution of the contract. March 1, 1946, the house was completely destroyed by a tornado and P was killed. P left surviving

him his wife, W, and two children. W was appointed P's administrator. On March 15, 1946, V died testate and by his will gave all his personal property to L and all of his real property to D, and made X his executor. On April 1, 1946, X did not tender a deed of the property to W because D refused to execute a deed, and W did not tender the balance of the purchase money.

- (a) Suppose now, July 20, 1946, X desires to enforce specific performance of the contract. What persons must he make parties plaintiff and defendant? Why?
- (b) If X brings the suit for specific performance and the defense is made that there should be no recovery because X cannot perform due to the destruction of the house, what decree should the court make, and why?
 - (1) If the defendant should allege and prove V's title to be unmarketable, what decree would the court make? Why?
 - (2) If the court rendered a decree for specific performance and the defendant paid the money into the court, who would be entitled to it? Why? Who would take title to the lot? Why?
- (c) If X brings an action for breach of the contract, can he recover? Why?

WILLS

(LAW 18)

FINAL EXAMINATION IN WILLS (LAW s18)

Summer Semester, 1945

Professor Schrebbly

NOTE: Three and a half hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. In all answers give particular attention to the rules of law developed in Illinois.

1. T executed a will on June 4, 1930, wherein he gave one-third of all his property to his wife, W; one-third to the X Hospital; and one-third to the Y Orphanage. He named the A Bank as executor. The will was witnessed by B, brother of T, and by C, cashier of, and a shareholder in, the A Bank. On August 10, 1935, T procured a divorce from W. On October 9, 1939, T died, leaving W surviving him, but no descendants. Among his papers was found the will above mentioned, with a notation in these terms in the margin of the instrument: "This will revoked September 3, 1938. (signed) T." (a) Should the will be admitted to probate? (b) If the will should be admitted to probate, would it be fully effective in all its parts? (c) What would happen if the widow, W, should renounce the will?

2. T gave oral instructions for his will, including a legacy of \$1000 for A, as well as several other pecuniary legacies and several devises of land. By oversight of the attorney who prepared the will, the legacy for A was omitted from the finished draft. After having read said draft, T duly executed the same, and it was attested and subscribed by witnesses in due form. Among the devises of the will was a devise to B of "my farm of 160 acres in Section 3, Township 10, etc." T owned no land in the section mentioned. He owned but one farm of 160 acres, which was located in Section 8 of Township 10. This farm was not otherwise specifically devised in the will, which contained a general residuary clause covering both real and personal property. The facts above recited come to light upon the death of T. Neither A nor B is an heir of T. A and B seek your advice. Would you advise them (a) to oppose probate of the will; (b) to file suit to contest the will after probate thereof; or (c) to seek some other form of relief?

3. The will of T was offered for probate in X County, Illinois, on March 10, 1918. It appeared to bear the signature of T, and of two witnesses, A and B, and was dated January 4, 1900. Both witnesses were called to testify at probate. Witness A testified that he recognized his signature upon the said instrument as genuine; that T had brought the instrument to his office on January 4, 1900, at a time when only he and T were present, and had requested him to subscribe as a witness; that he did not at that time know the nature of the instrument; that he was unable to see any of the writing of the page upon which he signed his name, except the word "witness." Witness B testified that T had called at his house on January 6, 1900, and had then presented to him the said paper, and had asked him to sign it as a witness; that he recognized his own signature as genuine; that he could not remember what, if anything, he saw upon the paper at that time; and that he did not recall whether T stated to him the nature of the instrument. H, the heir-at-law, was then permitted to introduce evidence which showed with reasonable certainty that the signature of T was not in his own handwriting. Upon conclusion of the evidence, the County Court admitted the will to probate. Was this action proper?

4. In 1920, H duly executed a will wherein he gave all his property to any widow who might survive him; and if no widow should survive him, then to his brothers and sisters. In 1935 H married W. In 1936 H executed in due form an instrument which he described as a "Codicil to my will of 1920", wherein he gave a legacy of \$1000 to the C Church. Upon the death of H, said codicil was found with this notation upon the back thereof: "This codicil is hereby revoked this 10th day of July, 1937." Below this notation appeared the signatures of H, and of X and Y. H died in 1940 leaving personalty to the amount of \$10,000 and real estate of the value of \$50,000. He left surviving him his widow, W; his brother, B; and his sister, S. Is either of the two testamentary instruments above mentioned entitled to probate as the last will of H?

5. In 1911 H was adjudged a drunkard and a spendthrift in the Probate Court of St. Clair County, and a conservator was appointed, who duly qualified. Later in the same year, H executed a warranty deed purporting to convey certain land to W, his wife, and at the same time duly executed a will which devised and bequeathed all his property to the said W. The deed made by H to W was clearly void because of the conservatorship. On the death of H in 1914, W caused the will to be filed in the office of the clerk of the Probate Court, together with a petition for probate of the same. Before formal action on this petition, W withdrew the same, making affidavit that H left no property at his death because of the conveyance in 1911. In 1924, W mortgaged the land mentioned above, and made another mortgage upon the same in 1925. In 1928, W died, leaving a will wherein she devised all her real estate to X and Y. The children of H then filed suit in the City Court of East St. Louis for partition of the land above mentioned. Thereupon X and Y filed a petition in the Probate Court for probate of the will of H, and an order admitting the same to probate was entered. When the bill for partition came to a hearing, the chancellor entered a decree finding that the will of H was void, and ordering partition of the land. Appeal to the Supreme Court. What decision?

6. H was a legal resident of X County, Illinois, at the time of his death, which occurred at the home of his son, B, in Y County, Illinois. H left a duly executed will, wherein he appointed his son A as executor. H was survived by his wife, W, and by three sons, A, B and C. A was a resident of Detroit, Michigan; B, a resident of Y County, Illinois; and C, a resident of X County, Illinois. W and B presented the will of H to the county court of Y County, together with a petition for probate of the same and issuance of letters of administration with the will annexed to B. The said petition set forth that H was a resident of Y County, stated the date and place of his death, and also stated the names and places of residence of the surviving wife and children. Notice of the filing of the petition was duly given to all interested parties as required by the statutes. The county court found the facts set forth in the petition to be true, and entered an order admitting the will to probate and issuing letters to B with the will annexed.

Two years before his death H had been injured in a collision between the automobile in which he was riding and an automobile negligently driven by D. This injury was in no way connected with the death of H, but it had involved considerable expenditures for medical attention and hospital service, and had made it impossible for H to work at his trade.

Within a month after issuance of his letters, B brought an action in the circuit court of Y County against D, seeking to recover damages for the expenses incurred by H as a result of the injury aforesaid, and for loss of earnings attributable thereto. D set up by way of defense the following points: (a) that the county court of Y County lacked jurisdiction to admit the will of H to probate and to issue letters of administration thereupon; (b) that the order for issuance of letters to B was void, since letters should have been issued to A. or to B and C jointly; (c) that the cause of action on which the action was brought did not survive the death of H. Which of these defenses, if any, is valid?

7. H died intestate in Lincoln, Nebraska, where he resided. In January of 1895, letters of administration were issued to his wife, W, by the County Court in Nebraska. H owned real estate in Cook County, Illinois, at the time of his death, and in February, 1896, one Phillips was appointed administrator in the Probate Court of Cook County. He duly published notice of claim day, and filed an inventory listing said real estate. In 1899, P, a creditor of H who resided in Iowa, filed suit in equity in the Circuit Court of Cook County, seeking payment of his claim. In his bill P alleged that the inventory filed by W in the Nebraska administration did not list the Cook County land; that P did not know until shortly before filing his suit that H owned land in Cook County at the time of his death; that for the reasons heretofore indicated, P had not filed a claim against the estate of H in the Probate Court of Cook County within the two-year period then specified in the statute for the filing of claims; that the Nebraska estate of H was hopelessly insolvent. Is P entitled to relief in equity?

First Semester, 1945-1946

Professor Schnebly

NOTE: Three and a half hours are allowed. Organize your answers with respect to both substance and phraseology before writing is begun. Begin each answer upon a new page. No answer should exceed two pages in length. In all answers give particular attention to the rules of law developed in Illinois.

1. An instrument purporting to be the will of T was offered for probate. The subscribing witnesses were A and B. A testified that he subscribed the instrument on January 10, 1940, in the presence of T, at the latter's request; that he did not at that time know the nature of said instrument; that T did not sign the will in his presence, and that he did not see the signature of T upon the said instrument. B testified that he subscribed the instrument on January 12, 1940, in the presence of T, at the latter's request; that only he and the testator were present on this occasion; that he was not informed by T of the nature of the instrument; that T did not sign the instrument in his presence, and that he was unable to recall whether or not he saw the signature of T upon said instrument. Both witnesses testified that they believed T was mentally competent when they attested. The alleged will named the X Bank & Trust Co. as executor. Witness A was cashier of, and a shareholder in, the said corporation. Should the instrument be admitted to probate as the will of T?

2. H executed a will on June 4, 1930, wherein he gave one-third of all his property to his wife, W, one-third to the X Hospital, and one-third to the Y Orphanage. On August 10, 1935, H procured a divorce from W. On October 9, 1939, H died. Among his papers was found the will of 1930, with a line drawn through the signature, and a notation in the margin of the instrument in these terms: "This will revoked September 3, 1938. (signed) H." In the same envelope with the will was found the draft of another will, dated September 3, 1938, wherein H gave one-third of his property to the X Hospital, one-third to the Y Orphanage, and one-third to the Z School. This latter instrument was signed by H, but subscribed by only one witness. H died without leaving issue surviving him. His nearest relative at the time of his death was his brother, B. Should the will of 1930 be admitted to probate?

3. On March 9, 1935, T requested two witnesses to subscribe an instrument which he declared to be his last will and testament. The witnesses subscribed accordingly. At the time said witnesses subscribed, T had not signed the instrument. He did affix his signature privately on the following day. Said instrument contained the following provision:

"I direct my executor to pay such legacies as may be indicated by any memorandum which I have heretofore made, or may hereafter make. Any such memorandum will be found enclosed with this will, and will bear my signature."

On April 2, 1938, T executed in due form an instrument which bore the title, "Codicil to my will of March 9, 1935." This codicil gave a legacy of \$250 to A. At the death of T in May of 1940, the will and codicil before mentioned were both found among his papers. Enclosed with the will was found a slip of paper containing the following writing:

"June 1, 1936. It is my desire that my executor pay to B the sum of \$500. (signed) T."

Advise B whether he is entitled to the sum of \$500.

4. By his will T devised to a nephew land described as follows:

"...what is known as the Luther B. Bratton Station Street Farm in Section Three (3) Township Thirty (3) North, Range Fourteen (14) West of the Third Principal Meridian in Kankakee County, Illinois...."

T owned no land in section three, township thirty north, range fourteen west of the third principal meridian, and land in said section would not lie in Kankakee County. T did own a farm in section three, township thirty north, range fourteen west of the second principal meridian, which did lie in Kankakee County, and which was popularly known as the Bratton Station Street Farm. T drafted his own will. (a) Would you advise the nephew to oppose probate of the said will, or to file suit in equity to contest the will after probate? (b) If you would not advise as indicated above, what advice would you give?

5. By his will duly executed in September of 1938, H, who was then unmarried, gave half of all his property to his cousin, C, who was the child of a deceased brother of H's father; and the other half H gave to certain designated charities. H married W in 1940. W died in 1942. H died in 1944, leaving as his nearest surviving relatives C, above mentioned; and A, who was a sister of H's mother. Advise C as to his rights in respect to the estate of H.

6. T died domiciled in X County, Illinois. T owned no real estate in X County, but did own considerable land in Y County. He left a duly executed will wherein he devised all his property to his son, S, who resided in Buffalo, N.Y., and named S as executor. T's wife had predeceased him, and his only surviving relatives were S, and a nephew, N, who resided in Z County, Illinois. S filed his petition in the county court of Y County, seeking probate of the will, and issuance of letters testamentary to himself. The will was admitted to probate and letters issued as prayed. What defects, if any, were there in the proceedings above recited?

7. D died intestate on January 10, 1945, and letters of administration were issued on January 16th by the county court of Champaign County to A as administrator. March 5, 1945, was duly fixed as "Claim Date" and notice thereof published as required. On February 27, 1945, A filed in the county court a complete inventory of the property left by D. On May 22, 1945, P began an action in the circuit court of Champaign County against A as administrator, seeking to recover damages for personal injuries sustained in an automobile collision caused by the negligence of D. On November 20, 1945, judgment in said action was rendered in favor of P, with damages in the sum of \$1500. (a) Was there any apparent error in the rendition of this judgment? (b) If the judgment is valid, how shall P proceed to collect it?



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